Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 3rd March 1877.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding*,
The Hon'ble V. H. Schalch,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. J. Reynolds,
The Hon'ble H. Bell,
The Hon'ble Baboo Isser Chunder Mitter, Rai Bahadoor,
The Hon'ble Baboo Ram Shunker Sen, Rai Bahadoor,
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor,
The Hon'ble H. F. Brown,
The Hon'ble G. Paebury.

COURT OF WARDS' ACT, 1870.

The Hon'ble Mr. Schalch presented the report of the Select Committee on the Bill to amend the Court of Wards' Act, 1870.

The Hon'ble Mr. Reynolds said, while he was fully sensible of the value of the labour which the Select Committee had bestowed on the Bill, it appeared to him that the conditions under which the measure had been laid before them were such as to make the result of their labour less satisfactory than it would otherwise have been.

The Committee were precluded from considering anything more than certain specified sections of the old law, and the consequence was that if the Bill now before the Council should pass into an Act, we should have the law upon this important subject in a somewhat confused and fragmentary state. It would be contained in two separate enactments, and any one who wished to ascertain what the law was would have to refer from the one Act to the other in order to discover what portions of the law had been repealed and what portions were still in force. It was true that a similar procedure was followed when the excise law was amended by the passing of Act II of 1876; but

that Act was never intended to be anything more than a temporary one, and at the time it was passed measures were already in progress for consolidating the law on the subject. It appeared to him that it would be more convenient, and more consistent with modern practice and the usual course of legislation, if the opportunity were taken to repeal the Court of Wards' Act, 1870, and re-enact it with such alterations and modifications as might be found necessary. It was very probable that in other sections we should find little or nothing to change, but it would be a great convenience to have the whole law contained in one enactment. He therefore begged to move that the Bill be referred back to the Select Committee, and that it be an instruction to the Committee to consolidate the whole law on the subject into one complete measure.

The HON'BLE MR. SCHALCH observed that he hoped it would be understood that the attention of the Select Committee would be confined to the points which were raised in the present Bill.

The motion was agreed to.

On the motion of the Hon'ble Mr. Schalch, the Hon'ble Mr. Reynolds and the Hon'ble Baboo Ramshunker Sen were added to the Select Committee.

EXCISE REVENUE.

THE HON'BLE MR. REYNOLDS moved that the report of the Select Committee on the Bill to consolidate the law relating to the abkaree revenue in the Presidency of Fort William in Bengal be taken into consideration in order to the settlement of the clauses of the Bill. He said that a reference to the report of the Committee, which was already in the hands of hon'ble members, would show that though the alterations made in Committee were somewhat numerous, they were none of them of very great importance. Two of the most extensive alterations were founded on one general principle, viz. that matters should not be made the subject of one law when they were already provided for in another. The law relating to the sale, possession, and transport of opium was now regulated by the Opium Act XXIII of 1876, and the Committee had accordingly excluded all provisions relating to opium from the present Bill. The old abkaree laws, Acts XI of 1849 and XXI of 1856, were enacted before the passing of the Penal Code, and several of the offences referred to in those laws were now punishable under the provisions of the Penal Code. The Committee had therefore thought it unnecessary in the Bill to provide any special penalty for offences which were already cognizable under the Penal Code. They had thought it well somewhat to restrict the powers of abkaree officers as to entering and inspecting a licensed dealer's shop. The Committee had recognized the necessity of maintaining these powers for the protection of the revenue, but they thought it better that they should only be exercised by officers specially authorized for the purpose. In section 129 (section 120 of the revised Bill) the Committee had found it necessary to specify the periods within which appeals might be preferred. The Bill, as referred to them, provided that appeals should be brought in the usual manner under the laws and

The Hon'ble Mr. Reynolds.

regulations in force relative to appeals from the orders of Collectors and Commissioners. But it was found very difficult to say what this "usual manner" was. One system of appeals was prescribed by "The Bengal Survey Act, 1875," and another by "The Bengal Irrigation Act, 1876," and various provisions on the subject of appeals were also introduced in "The Agrarian Disputes' Act," "The Land Registration Act," and "The Estates' Partition Act." The Committee had therefore thought it necessary to specify in the Bill the periods within which appeals under this Bill should be brought.

With regard to the separate report signed by one member of the Committee, recommending the amalgamation of Chapters II and III of the Bill, he might say that the subject was considered in Select Committee, but it was the opinion of the majority that it would be better to adhere to the arrangement of the existing law. At present the administration of the abkaree revenue was regulated in Calcutta mainly by Act XI of 1849, and in the mofussil mainly by Act XXI of 1856, and the substance of those two Acts was reproduced in Chapters II and III of the Bill. The Committee had considered the propriety of recasting the Bill, but they found it impossible to avoid the necessity of having a separate chapter for the provisions relating to Calcutta, and they found it, on the whole, better to maintain the arrangement as it stood in the Bill.

With these remarks he begged to move that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill.

The motion was agreed to.

The Hon'ble Mr. Reynolds also moved that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Mr. Reynolds moved the addition of the following proviso to section 8:—

"Provided also that nothing contained in this section shall apply to the sale of any spirituous liquors, wines, or beer purchased by any person for his private use, and so disposed of upon such person quitting Calcutta or after his decease."

This proviso, which had been introduced into the third Chapter of the Bill, was by some oversight not introduced in the corresponding section of the second Chapter.

The motion was agreed to.

The Hon'ble Mr. Reynolds moved that the following section be substituted for section 34:—

"All fines leviable under this Chapter shall be adjudged by any Justice of the Peace for the town of Calcutta upon information exhibited before such Justice by order of the Collector, or shall be adjudged by a Magistrate of Police, if the case is tried by such Magistrate under section 26; and in default of payment of any fine to which an offender is adjudged, he shall be liable, by order of such Justice or Magistrate, to imprisonment in the common jail; and no proceedings shall be taken under this section by any such Justice or Magistrate after the expiration of three calendar months from the date of the offence by which the fine was incurred."

Section 64 was section 36 of the Bill as originally drafted. It contained a provision that a Justice of the Peace, "on an information laid before him by order of the Collector, shall forthwith summon the parties accused, and upon their appearance or default shall examine into the matter, and upon due proof made thereof, by the voluntary confession of the parties or by the oath or affirmation, in cases wherein an affirmation is receivable by law instead of an oath, of one or more credible witness or witnesses, shall give judgment accordingly." It had been brought to his notice that since the passing of the Oaths' Act of 1873 it had been usual to repeal or omit words relating to oaths and affirmations as unnecessary, and he accordingly proposed the substitution of this amended section for the section as it originally stood.

The HON'BLE BABOO KRISTODAS PÁL remarked that the procedure prescribed by the original section was omitted from the section now proposed. It was true, as pointed out by the hon'ble mover, that the Oaths' Act rendered unnecessary the clause relating to oaths and affirmations, but the effect of the amendment was the omission of the procedure, which might lead to misunderstanding and mistake. He believed it was usual in cases of this kind to make a reference to the general procedure law, and he would ask whether it would not be desirable to insert some words in the section to the effect that all cases under this Bill should be tried by Magistrates under the Criminal Procedure Code.

The ADVOCATE-GENERAL observed that if the Magistrate was not directed to follow any particular procedure, he would follow his own procedure.

The HON'BLE MR. REYNOLDS said, as these were criminal proceedings, there was no reason, he thought, to prescribe any special procedure, as the deciding officer would be governed by the ordinary procedure in criminal cases.

The motion was agreed to.

Section 51 empowered the Board of Revenue to prescribe rules for distilleries.

The HON'BLE MR. REYNOLDS moved the insertion of the words "with the sanction of the Lieutenant-Governor, subject to the confirmation of the Governor-General in Council," after the word "may" in the first line. It appeared necessary to provide for the action of the Local Government in the matter, but he believed that rules of this kind ought to be subject to the confirmation of the Supreme Government.

The motion was agreed to.

A similar amendment was made in section 52.

The HON'BLE MR. REYNOLDS said that in section 83, as it stood, no provision was made for the award of imprisonment in default of payment of fine, and it appeared necessary that such provision should be made. He therefore moved the insertion of the words—

"and in default of payment of any fine to which an offender is adjudged he shall be liable, by order of such Magistrate, to imprisonment,"

after the word "officer" in line 7.

The motion was agreed to.

The HON'BLE MR. REYNOLDS said, section 86 provided that any person who should be imprisoned on account of the non-payment of fine, if the offence of which he had been convicted was one with respect to which the information of the Collector or an abkaree officer was required by section 83, might be confined either in the civil or criminal jail. But it did not provide what the nature of the imprisonment should be if the offence was of any other kind. There seemed to be no occasion for prescribing any special kind of imprisonment for these particular offences; he therefore proposed to omit the words—

"if the offence of which he has been convicted be one with respect to which the information of the Collector or an abkaree officer is required by section 83,"

so as to leave a discretion in all cases to direct the imprisonment to be either in the civil or criminal jail.

The motion was agreed to.

In section 87 an amendment was made similar to that in section 51.

The HON'BLE MR. REYNOLDS said, section 88 provided that all fines levied, "the disposal of which is not provided for, shall belong to the Local Government." It seemed expedient to omit those words, as the excise revenue was not a part of the receipts of the Local Government, but belonged to the general revenues." He therefore proposed to substitute for this section what was a reproduction of the second part of the section as it stood in the Bill:—

"The Board may appropriate any portion, not exceeding one half, of the fines levied under this chapter, the disposal of which is not specially provided for, for rewarding informers or for compensating persons subjected to annoyance or injury by any proceedings under this chapter."

The motion was agreed to.

In sections 91 and 101 amendments were made similar to that made in section 51.

The HON'BLE MR. REYNOLDS said that the last amendment which he had to move was the substitution of the word "excise" for "abkaree" throughout the Bill. It appeared to be an accepted rule in modern legislation that English words should be used in the phraseology of our laws instead of vernacular terms. Where the old regulations spoke of "zemindars" and "mahals," modern laws spoke of "proprietors" and "estates." In accordance with that rule, he proposed to substitute the word "excise" for "abkaree" in every place in which "abkaree" was used throughout the Bill.

The motion was agreed to.

The Council was adjourned until further notice.

Saturday, the 31*st March* 1877.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The Hon'ble V. H. SCHALCH, C.S.I.
The Hon'ble H. J. REYNOLDS.
The Hon'ble H. BELL.
The Hon'ble T. E. RAVENSHAW.
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR.
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR.
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR.
The Hon'ble NAWAB MEER MAHOMED ALI.
The Hon'ble H. F. BROWN.

EXCISE REVENUE.

THE HON'BLE MR. REYNOLDS moved that the Bill to consolidate the law relating to the excise revenue in the Presidency of Fort William in Bengal be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. REYNOLDS said the second section provided for the coming into force of the Act on the date of its publication. It was desirable that this Bill should not come into operation until the Indian Opium Act should come into force. The Opium Act was to have taken effect from the 1st of April, but a subsequent Act had been passed deferring the operation of the Opium Act, and it was therefore necessary to amend section 2 of this Bill, which he proposed to do as follows :—

"It shall come into force from such date as the Lieutenant-Governor may direct by notification in the *Calcutta Gazette.*"

The motion was agreed to.

The HON'BLE MR. REYNOLDS moved the substitution in Chapter II of the words "Presidency Magistrate" for "Magistrate of Police." The amendment, he said, was merely verbal, to bring the phraseology of the Bill into harmony with the Presidency Magistrates' Act.

The motion was agreed to.

The HON'BLE MR. REYNOLDS moved the substitution in section 7 of the word "inspector" for "constable," and the omission of the word "burkundazes." The latter amendment was necessary upon the general principle of using English words instead of vernacular.

The motion was agreed to.

The HON'BLE MR. REYNOLDS moved the substitution of the following words for the last six lines of section 21 :—

"and inspect at all times by day or by night, and may similarly authorize any excise officer to enter and inspect at all times by day all houses and shops in which licensed dealers may carry on the sale of spirituous or fermented liquors or intoxicating drugs."

Under the original Act XI of 1849, excise officers, as such, had full power to inspect licensed shops without any special authorization from the Collector. But as it was considered advisable to place some restriction upon this power of search, and not to give it except to such persons as might be qualified on account of their experience and discretion, it was therefore provided that the Collector might authorize by warrant any excise officer to exercise this power. It was not intended that the Collector should issue a separate warrant in each instance, but that he should confer a general power of search on such officers as were duly qualified. It was subsequently brought to notice that the wording of the section might be thought to require a separate warrant in every case: the section as proposed to be amended would provide for this.

The motion was agreed to.

The HON'BLE NAWAB MEER MAHOMED ALI said that under section 21 an officer duly authorized could enter the house of a licensed dealer at any time of the night or day. There was no provision for giving notice for the retirement of females who, according to the usage of the country, did not appear in public. Section 384 of the Criminal Procedure Code provided the procedure to be adopted in the case of the search of an apartment in the occupancy of a woman who, according to the customs of the country, did not appear in public.

According to that section, previous notice should be given to females to retire if they should happen to reside in the same house as a licensed dealer. He would therefore move that the following proviso be added to section 21:—

"Provided that, if the house be one in which the female members of the licensed dealer reside, such officer shall not enter and inspect the same without a previous notice for the removal of the females."

The HON'BLE BABOO ISSER CHUNDER MITTER said, as he read the section, it seemed to him that section 21 did not provide for search: it authorized only the inspection of a shop in which liquors were sold or manufactured; there was no question of search in the section. The hon'ble member had omitted to look at another section under Chapter III, section 70, where authority was also given for the inspection of shops by day or by night. As far as search was concerned, the provisions in this Bill were sections 23 and 73, under Chapters II and III. There was a provision in section 24 to the effect that whenever a zenana was entered the procedure adopted by the High Court should be followed. But there was no such provision in section 73, and BABOO ISSER CHUNDER MITTER would support the hon'ble member if he proposed to add his proviso to section 73 instead of to section 21. Sections 21 and 70 referred only to the inspection of shops, and he believed excise or police officers would have no authority to enter any other part of the house under those sections; and no dealer, it was to be supposed, would keep the female members of his family in a shop where business was transacted.

The HON'BLE MR. REYNOLDS said he hoped the hon'ble member would not press his amendment. The powers of entry and search had now been materially restricted by providing that they should only be exercised under a warrant from the Collector. We were not now engaged in settling the excise law, but we were merely consolidating the existing law; and in a consolidating

Bill it appeared undesirable to make alterations which were not shown to be actually necessary. These provisions had been in force since 1849, and he was not aware that any complaints had been made of their operation. In cases of this kind, where the sale or manufacture of spirits was concerned, it appeared to him essential, in the interests of justice and the protection of the revenue, that an officer should be able to exercise powers of inspection without previous notice. If notice were given, even for a few minutes, all traces of illicit manufacture or sale might disappear and the revenue be defrauded.

The motion was then put and negatived.

On the motion of the HON'BLE MR. REYNOLDS a verbal amendment was made in section 24.

The HON'BLE NAWAB MEER MAHOMED ALI moved the addition to section 30 of the words "which sum or any portion thereof may be paid to the person aggrieved." He thought the aggrieved person should get something by way of compensation from the hands of the police or excise officer. A similar provision would be found in section 80 of the Bill.

The HON'BLE MR. REYNOLDS said he was not quite sure that the words were necessary. Under the Presidency Magistrates' Act and the Criminal Procedure Code, the Magistrate who adjudicated a case was empowered to award as compensation any portion of the fine which was imposed. But the provision had been retained in the Opium Act, and there was also some doubt whether the provisions of the Presidency Magistrates' Act would apply to convictions under this Chapter before a Justice of the Peace. He had therefore no objection to the amendment.

The motion was then agreed to.

In section 31 an accidental omission was supplied on the motion of the HON'BLE MR. REYNOLDS.

In section 33 the words "and in some conspicuous part of the place where the property was seized" were, on the motion of the HON'BLE NAWAB MEER MAHOMED ALI, inserted after the words "*Calcutta Gazette.*"

In section 39 the word "constable" was substituted for "chuprassy," and "a Presidency Magistrate or other Magistrate having jurisdiction" for "a Magistrate of Police."

In section 70 the following words were, on the motion of the HON'BLE MR. REYNOLDS, substituted for the first fifteen words, with the object of making the section accord with section 21 as it had been amended :—

"Any excise officer above the rank of a peon, if authorized in that behalf by a warrant under the hand of the Collector, may enter and inspect at all times by day or night, and any excise officer similarly authorized may enter and inspect at all times by day."

A verbal amendment was made in section 71.

Section 80 provided a penalty of Rs. 500 for a vexatious search or seizure.

The HON'BLE NAWAB MEER MAHOMED ALI said he thought a mere fine would not be an adequate punishment for an officer who might, at the instigation of some other person, oppress a man with whom such person had enmity. He had known many instances in which police and excise officers did not hesitate to exercise oppression for the sake of illegal gratification. In such

cases, unless these officers had before them some bodily fear, they would not be restrained by a mere fine, which might be met by the person at whose instigation the offence was committed. He therefore moved the insertion of the words "imprisonment in the criminal jail for a period not exceeding six months and to" after the word "to" in line 12 of the section.

The HON'BLE MR. REYNOLDS said he thought the penalty provided by the section was quite sufficient. It would be observed that an excise officer, if convicted for vexatious search or seizure, would be liable to a fine of Rs. 500. He was aware that the fine was a maximum and not a minimum one. If the fine was not paid, the officer convicted would be liable to imprisonment for six months. The section referred to officers in the service of Government, which had a hold upon them beyond the penalty here provided, inasmuch as the officers so convicted would be liable to loss of place and pension. Under these circumstances MR. REYNOLDS did not think that the penalty here provided was inadequate.

The HON'BLE BABOO KRISTODAS PAL said that, if the provision of the Criminal Procedure Code, under which officers who made illegal arrests were liable to punishment, applied to offences under this section, then, coupled with that provision, he thought this section provided a sufficient punishment. But if an offence committed under this section was not triable under the general provisions of the Criminal Procedure Code, he considered that the punishment was not sufficient. If a police officer, for instance, arrested a person illegally under the Criminal Procedure Code, he would be liable to fine or imprisonment. But, as the section was worded, an excise officer illegally arresting a person was liable merely to fine; and, as observed by the hon'ble mover of the amendment, in the case supposed, where a person, from vindictive feelings, might induce an excise officer to annoy a neighbour, the fine would practically be paid by that person. The hon'ble member remarked that the power of arrest was converted sometimes into an instrument for gratifying personal feelings. He was not prepared to say how far that was true, but it was not unlikely that the power might be so made use of. If the Council were of opinion that the general provisions of the criminal law would be applicable to such cases, then he would not support the motion; otherwise he would support it.

The HON'BLE MR. REYNOLDS observed that he understood that an excise officer offending under this section would be liable to be convicted either under it or under the general provisions of the criminal law, though of course he could not be convicted under both.

The motion was then negatived.

The HON'BLE BABOO RAM SHUNKER SEN moved that section 89, which provided a penalty for contempts before the Collector, be transposed so as to stand after section 119. In the position in which the section now stood the provision would only be applicable to contempts committed before Collectors in the mofussil; he thought a provision similar to section 38 of Act XI of 1849 should be inserted to provide for contempts committed in Calcutta.

The HON'BLE MR. REYNOLDS having observed that the matter pointed out was apparently an omission—

The motion was agreed to.

The HON'BLE MR. REYNOLDS said that section 102 provided the rate of duty to be paid on imported spirits. The rate of four rupees per gallon was inserted because that happened to be the rate under the present Tariff Act. But it was necessary to provide for the contingency of the rate fixed by the Tariff Act being altered. He would therefore move that, for the words "the rate of four rupees the imperial gallon of the strength of London-proof, and the duty shall be rateably increased as the strength exceeds London-proof," the following words be substituted:—

"a rate not exceeding the rate fixed for imported spirit by the Indian Tariff Act, 1875, or any similar law for the time being in force."

The motion was agreed to.

On the motion of the HON'BLE MR. REYNOLDS, an omission was supplied by the insertion of the words "subject to the confirmation of the Governor-General in Council" after the word "Government" in line 7 of section 117.

On the motion of the HON'BLE MR. REYNOLDS a verbal amendment was made in section 119.

The HON'BLE NAWAB MEER MAHOMED ALI said that section 123 provided for the grant of rewards "either before or after" the adjudication of a case. He did not understand how an informer could get an award "before" the adjudication of a case, or, in other words, before the information which was given was proved to be correct. If the reward was given, and the information turned out to be false, would the reward which had been given be taken back? He would move the omission of the words "either before or."

The HON'BLE MR. REYNOLDS observed that he could not accept the amendment. It had been strongly represented by the Board of Revenue that it was essential to the proper working of the law that the Board should have a discretion to grant rewards to informers before the adjudication of a case. He would therefore ask the hon'ble member not to press the amendment.

HIS HONOR THE PRESIDENT said that it was quite possible that it might in some cases be necessary to give rewards before a formal adjudication had been completed; for instance, a case of this sort might occur: A traveller on the Grand Trunk Road, possibly proceeding on a pilgrimage which rendered delay impossible, might observe a large quantity of opium in the possession of other travellers, and he might give information to the nearest Magistrate which might lead to the seizure of the opium. In a case of that sort HIS HONOR thought it undesirable that there should be anything in the law which would make the informer suffer detention or loss of time before he could obtain the reward; the reward should be given at once and the informer allowed to depart.

The motion was, by leave, withdrawn.

On the motion of the HON'BLE MR. REYNOLDS, amendments were made in the second clause of the first schedule, which were rendered necessary by the amendment made in section 102.

The HON'BLE MR. REYNOLDS then moved that the Bill as amended be passed. He said that, according to the rules for the conduct of business, a Bill could not be passed at the same sitting at which any material amendment had

been made. If hon'ble members considered that any of the amendments which had been made were material, he did not wish to press the motion. But he thought they would agree with him that the amendments which had been passed were simply verbal and of an immaterial nature, and not such as would interfere with the Bill being passed at once.

His Honor the President said he thought the amendments which had been carried were of a very formal character, so much so that he considered many of them ought to have been thought of by the Select Committee and provided for by them instead of being considered in Council. It appeared to him that there was a great tendency in this Council to leave work to be done in Council instead of its being considered and disposed of in Select Committee.

The motion was then agreed to and the Bill passed.

COURT OF WARDS.

The Hon'ble Mr. Schalch moved that the report of the Select Committee on the Bill to amend the Court of Wards' Act, 1870, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Nawab Meer Mahomed Ali withdrew the motion of which notice had been given, that the words "and such order shall be final and conclusive for all the purposes of this Act" in line 16 of section 26 be omitted.

On the motion of the Hon'ble Baboo Isser Chunder Mitter, the word "appoint" was substituted for "nominate" in line 6 of section 45.

The Hon'ble Baboo Isser Chunder Mitter moved the insertion of the words "and every officer employed as hereinafter provided" after the words "under this Act" in line 7 of section 46. He said that sometimes tehsildars and other collecting agents made away with the accounts, and it was very difficult to bring them to justice. It often happened that, before a settlement of liabilities was made, the year within which a suit could be brought expired, and the estate became a positive loser. His object in moving this amendment was that tehsildars and other agents should be held to be public accountants under Act XII of 1850, in the same way as managers and sub-managers were now held to be. In that case the Collector would have authority to realize funds in their hands under the certificate procedure of Bengal Act VII of 1868. Another object of the amendment was that the period within which the realization could be effected might be extended. At present much money was lost merely because the liability of these collecting agents was limited virtually to one year.

The motion was agreed to.

The Hon'ble Baboo Isser Chunder Mitter postponed the amendment in section 50 which stood in his name until after the consideration of the amendments in section 53 which stood in the name of the Hon'ble Baboo Kristodas Pal.

The Hon'ble Baboo Kristodas Pal moved the substitution of the word "five" for "ten" in line 16 of section 53. He said the history of this proposal

was this. When the original Bill was referred to the Select Committee, it was considered that some limitation ought to be put on the power of the Court of Wards to expend money on improvements. Facts came to the notice of some members of the Committee that money had in some instances been wasted in the name of improvement. It was therefore deemed desirable to limit the power of the Court of Wards to expend money on improvements, and the limit the Committee proposed was five per cent. on the net profits of the estate. When the Bill was recommitted the question was again discussed, and the majority were of opinion that the percentage should be increased to ten per cent., and that greater latitude should be given to the Court of Wards in expending money for improvements. To the second part of the new provision he did not object. As the Bill originally stood, the power of the Court was greatly circumscribed. The wording of the original section was as follows:—

"Provided that the amount so expended shall not exceed five per centum of the said surplus, unless in the opinion of the Court, subject to the express sanction of the Board and the Lieutenant-Governor, it is *absolutely necessary, for the protection of the estate,* to expend an amount exceeding such percentage."

So that unless the Board and the Lieutenant-Governor were satisfied that it was absolutely necessary for the protection of the estate,—for instance, in the case of a famine, flood, or some such extraordinary calamity, when it might be deemed necessary to expend more than five per cent. for the protection of the estate,—the Court was not authorized to exceed the five per cent. limit. But as the section now stood, it greatly extended the powers of the Court. It enacted—

"Provided that the amount so expended shall not exceed ten per centum of the said surplus, unless in the opinion of the Court, subject to the express sanction of the Board and the Lieutenant-Governor, *it is desirable, for the protection and in the interest of the estate,* to expend an amount exceeding such percentage."

By comparing the words of the two sections, it would be seen that the discretion of the Court of Wards had been materially and widely extended. Such being the case, he did not see that there was any good reason for raising the limit from five to ten per cent. in ordinary cases. In extraordinary cases, in which the Board and the Lieutenant-Governor might think it desirable to spend the surplus on schemes of substantial improvement, it would be in the power of the Court of Wards to obtain the necessary sanction; but ordinarily he thought that an expenditure of five per cent. of the profits should be sufficient for ordinary improvement. As the phrase now went, there was an "oscillation" of opinion in Select Committee on the subject, and he being in the minority, had felt it his duty to move this amendment in Council. He had heard nothing which satisfied him that the limit of five per cent. would not be sufficient for ordinary purposes. He found that the Government had fixed a limit of three per cent. only for the improvement of Government estates, or estates which were under the *khas* management of Government. Now, if a three per cent. improvement fund was deemed by the Government to be sufficient for ordinary improvements in Government estates, surely five per cent. ought not to be considered insufficient for purposes of ordinary improvements in private estates which came under the management of the Court

The Hon'ble Baboo Kristodas Pal.

of Wards. It was worthy of note that the three per cent. fund in Government estates was applicable in this wise—half of the three per cent. was applicable to the improvement of roads, one-third to primary education, and one-sixth to miscellaneous local improvements. Every ward's estate paid the road cess, and so far as the road cess was regarded as an outlay for the benefit of the estate, that object was met by the payment of the road cess. As regards contributions to schools, it was not intended that such contributions should be made from the ten per cent. fund proposed in the Bill. It was proposed solely for material improvements. For the support of schools, contributions might be made from the general funds of the estate. It might be urged that in the cases of Government and private estates there was one point of material difference, which was that the Government gave three per cent. on the gross receipts of Government estates, whereas it was proposed in the Bill to allow ten per cent. on the net receipts, which certainly was a point of difference. But he submitted that the difference was rather visionary than real; for the revenue the Government received in khas estates constituted the whole of the assets *minus* charges of collection, whereas the assets of the ward's estate consisted in the residue left after payment of the Government revenue or rent to the superior landlord *minus* the cost of collection. So, practically, the assessment for the improvement fund was made upon the net receipts of estates of both classes.

Further, it was observable that large works of improvement, such as embankments or extensive drainage works, might be constructed without recourse to the ten per cent. fund. He found that under section 4, clause 1, "the Collector may cause any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or any embankment or water-course which is necessary for the protection or drainage of the neighbouring country, to be taken charge of and maintained by officers of Government," so that new as well as old works might be maintained at the expense of private estates when the works were not legitimately chargeable to Government. That being the case, if it was necessary to construct some gigantic work for the protection of the estate, it would fall under the provisions of the Embankment Act, and the estate would be liable to bear the cost. There might, however, be small works, for the drainage or protection of the estate from floods, which were not contemplated by the Embankment Act, and for which it might be desirable to spend money from the Wards' Estates Fund. For such works it was certainly necessary to provide funds, and he thought that ordinarily five per cent. of the surplus ought to be sufficient: in extraordinary cases, as he had observed, the Bill gave ample discretion to the Government to expend money exceeding that limit.

The laxity of the system which obtained at present in regard to the expenditure of money on improvements in wards' estates was, he thought, best illustrated in the case of the Durbhunga estate. He was reading some papers lately connected with the management of that estate, and he found from a Minute recorded by Sir George Campbell in 1871 that in that year the estate had a balance of Rs. 43,000,000. Sir George Campbell remarked that, after providing for all expenditure and for all legitimate works of improvement, the estate

might be expected to save about Rs. 10,00,000 a year, and that at the end of the minority of the Raja there would be a probable balance of a million of money. But how did the facts stand now? We were now in the beginning of 1877. He found in the last number of the *Calcutta Gazette* that, so far from a million of money accruing by this time, the balance, which stood in 1871 at Rs. 43,00,000, had dwindled down to Rs. 18,00,000. Now what were the resources of this estate? He found that the current demand of the estate annually amounted to Rs. 21,20,000; that the expenses of management came to Rs. 2,74,000, and the disbursements on all accounts last year amounted to Rs. 24,98,000, though the collections did not exceed Rs. 16,38,000. He was well aware that the famine of 1873-74 made a deep hole in the balance sheet of this estate; that it entailed a large expenditure of money upon works of utility for the maintenance of the ryots; that it led to large remissions of rent, and also to charitable relief on a large scale. But making every allowance for this large extra expenditure, he could not persuade himself to believe that in the system on which the estate had been managed, due regard had been paid to the fiduciary nature of the charge devolving upon the Court of Wards. When Sir George Campbell remarked that ordinarily, after making every provision for the maintenance of the estate and necessary improvements, there would be left a balance of Rs. 10,00,000 a year, it should be remembered that he allowed nearly Rs. 10,00,000 annually for expenses of management and improvements. The expenses of management last year amounted to Rs. 2,74,000, and for the maintenance of the ward, improvements, and other legitimate charges there was left, according to Sir George Campbell's calculations, a balance of more than Rs. 8,00,000. But we found that the greater part of the old balance had disappeared and no new balance had accrued; the whole balance, after the management by the Court of Wards for so many years of the princely resources of the estate, amounted to Rs. 18,00,000. In the resolution from which BABOO KRISTODAS PAL had quoted the above figures His Honor the Lieutenant-Governor had been pleased to remark as follows:—

"In the Durbhunga estate remissions of rent have been unavoidable, but the expenditure in the estate was larger than seems to have been warranted, especially upon public works; and the expenses of management bear a very high proportion to the amount of the current demand of rent due to the estate. Upon the whole, the Lieutenant-Governor, in reviewing the administration of these large estates during the year, while he fully admits the zeal and trouble that have been devoted by the Revenue authorities to improving the estates and benefiting the condition of the tenantry, cannot resist the impression that the facts disclosed in the Board's report evince the necessity of a much more careful control over expenditure, and, in some cases, of greater vigilance in the realization of old arrears of rent."

BABOO KRISTODAS PAL fully subscribed to that opinion, and he thought that sufficient reasons existed why this Council should limit the powers of the Court of Wards for the expenditure of money on improvements.

He was indebted to the courtesy of the hon'ble mover of the Bill for a copy of the report of the Board of Revenue on the management of wards' and attached estates in 1874-75, in which a history of all the estates under the management of the Court of Wards had been given in full detail. He found

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from this report that the normal condition of the estates was indebtedness; but, thanks to the management of the Court of Wards and the supervision of the Board of Revenue, the debts had been in most cases liquidated, and that, when an estate had been restored to its owner at the end of his minority, it had generally been restored in a prosperous condition. All this he gratefully acknowledged, and he thought the landed proprietary in Bengal were indebted to the Government for the protection and benefit which they derived under the management of the Court of Wards generally. But the principles upon which the management of estates had hitherto been carried on had lately been departed from, and considerable abuse had consequently ensued, and that was the reason which induced him to ask the Council to put some limit on the power of the Court of Wards to spend money on improvements. About four years ago, he believed, a distinguished predecessor of His Honor the President had actually recommended that model farms should be established and maintained at the expense of wards' estates, and he believed some farms were established under his orders, which ultimately proved to be huge failures. Now, when these farms were established, they were doubtless established under the impression that they would prove beneficial to the estate, inasmuch as the tenantry of the estate would learn improved systems of cultivation and improved methods of rearing cattle. But the experiment failed, and the loss had to be borne by the ward's estate. Now it was not unlikely that with the best of motives works of so-called improvement might be undertaken which after all might prove in the end to be wild speculations. How many works had not been launched by the State at different times with the best prospects of success, but which ultimately proved to be serious burdens, and for the continuance of which the Government had been driven to the necessity of raising fresh taxation? What was true of the State was equally true of the ward's estate, and the result of experimental improvements with other people's money would be a heavy loss to the innocent proprietor, who would not have even for his consolation the pleasure of spending his own money for the gratification of his own wishes.

All things considered, BABOO KRISTODAS PAL thought the Council could not be too cautious in authorizing the Court of Wards to spend money on improvements. Improvements should certainly be made where they were absolutely necessary, but within proper and reasonable bounds; and if the Government was satisfied with a three per cent. improvement fund in their own estates, he did not see why five per cent. should not be sufficient for wards' estates.

In all extraordinary cases, as he had already remarked, the Government and the Court of Wards would have ample discretion for the construction of well-assured projects of improvement.

The HON'BLE MR. BELL said, with great respect to his hon'ble friend, he thought the greater part of the remarks which had just been made was beside the question. The point at issue was not one of principle, but of detail. The question before the Council was not whether the Court of Wards was to have unlimited and unrestricted power to expend money as they thought proper, but whether they were to be permitted to spend five or ten

per cent. of the profits of the estate upon works of improvement. That was the simple question before the Council. When the Bill was first before the Select Committee his hon'ble friend had brought under their notice what he considered to be the extravagant expenditure in the Durbhunga estate. With the facts of that case the Committee were not, however, familiar; but MR. BELL had no doubt there were very good reasons for whatever expenditure had taken place in that estate. We knew that there was a disastrous famine, and we were told that irrigation works had been constructed, and that it was expected that these works would in time yield a return of some ten per cent. upon the outlay. It of course was possible that these expectations might prove delusive, but these were questions which it seemed quite unnecessary to enter into on the present occasion. The Select Committee were of opinion that it was not desirable that the Court of Wards should have what they had at present—the unrestricted power of spending upon improvements the surplus proceeds of an estate. The hon'ble member admitted that the power which the Court of Wards possessed had as a rule been used with scrupulous exactness in the interests of their wards; but while the Select Committee were of opinion that the Court of Wards had been most faithful in the discharge of their duties, they did not think it right that any person, or any body of persons, who were mere trustees and not the owners of the property, should exercise this unlimited and unrestricted power, and it was with that view that the power of expenditure on improvements was limited to five per cent. on the net profits of the estate. But in fixing that proportion the Select Committee had at the time no particular information before it. It was stated that the Government allowed three per cent. for improvements on their own estates, and MR. BELL individually thought that, if the Government allowed three per cent., it would be reasonable to allow the Court of Wards to expend five per cent. for similar purposes; but it afterwards appeared that the three per cent. set aside for improvement in Government estates was calculated not upon the net profits, but upon the gross collections, and it appeared to him that three per cent. upon the gross collections would be almost equal to ten per cent. on the net profits. He had also consulted several very distinguished and experienced revenue officers, and they were all of opinion that five per cent. was too little. At the next meeting of the Select Committee the matter was again discussed, and his hon'ble friend the Senior Member of the Board of Revenue, whose vast experience entitled his opinion to great weight, also thought that ten per cent. ought to be set aside for improvements. It was therefore on these considerations that the Committee altered the five per cent. to ten per cent.

Now, his hon'ble friend Baboo Isser Chunder Mitter had a motion on the paper authorizing the Court of Wards to contribute to the support and maintenance of schools and dispensaries which the late zemindar might have established. MR. BELL thought it very desirable that the Court of Wards should have the power of making contributions to institutions of this nature, and if his hon'ble friend's amendment were adopted, he thought that contributions of this description might fairly come out of the ten per cent. fund. The hon'ble member

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opposite (Baboo Kristodas Pal) had pointed out that three per cent. in Government estates was divided into three parts,—for roads, primary education, and local improvements,—and he had said that no money need now be expended upon roads, as roads were constructed and maintained out of the Road Cess Fund. But there were roads within estates which were made for the improvement of the property, and which were not of such general importance to the public as to be made a charge upon a general fund like the Road Cess Fund. He saw no reason why, if the Government expended money for the construction and maintenance of roads in Government estates, zemindars should not find it necessary to provide funds for a similar purpose. It seemed to him that ten per cent. was a very reasonable limit to allow for the improvement of wards' estates.

There were many objects of local improvement, such as roads, schools, and dispensaries, for which a liberal landlord ought to provide; and he certainly thought that the limit of ten per cent. was not an excessive limit to ask the Council to sanction for such expenditure. He hoped, therefore, the Council would reject his hon'ble friend's amendment.

The Hon'ble Mr. Schalch said the hon'ble member had brought forward in support of his amendment the fact that in Government estates a limit of three per cent. was fixed for expenditure upon improvements in wards' estates. But the hon'ble member must recollect that that limit was not fixed by law, and it might be exceeded in regard to any particular estate. Here, however, the percentage would be fixed by law, and the amount could not be exceeded. He would not take up the time of the Council further, but he thought that a fixed limit of ten per cent. would not be sufficient, and that a discretion should be allowed to the Collector.

The Hon'ble Baboo Isser Chunder Mitter said he had only a few observations to make. He was quite in favour of the proposition that money should be expended upon improvements, which he considered was better than hoarding it. But the question was, what was the percentage that should be expended on improvements? He believed the sense of the Council was clear that not more than was expended in Government estates should be spent on improvements in wards' estates. There was not information enough before the Council to enable it to decide whether ten per cent. on the net profits of a ward's estate would be equivalent to three per cent. on the gross collections in Government estates; it was necessary, however, that some limit should be placed upon the action of the Court of Wards, and that principle had been accepted by the Council. He would only ask whether, instead of a percentage on the net profits, the Council would not fix a percentage on the gross collections, as in the case of Government estates.

The Hon'ble Baboo Kristodas Pal said he had one remark to make in reply to what had fallen from his hon'ble friend Mr. Schalch. He observed that the case between a Government estate and a ward's estate did not stand on all fours, because the percentage in the case of Government estates was fixed by executive order of Government, whereas in respect of wards' estates the limit would be fixed by law. Baboo Kristodas Pal was fully aware of

the distinction, but he would ask his hon'ble friend to remember that, if the limit had been absolute, the remark would have been just. But under the Bill, whenever the Board and the Government were satisfied that the limit should be exceeded upon good and valid reasons, it might be so exceeded, and any amount might be then spent. Such being the case, it would always be in the power of the Court of Wards to exceed the limit; and therefore the argument that the three per cent. limit of Government estates was liable to be varied by executive order of Government, whereas the ten per cent. limit of wards' estates could not be varied, did not, in BABOO KRISTODAS PAL'S opinion, hold good.

The HON'BLE MR. BELL remarked that it was true the ten per cent. limit could be exceeded by the order of Government, but it could only be exceeded where it was necessary for the protection of the estate, or in other extraordinary cases, which was a very different thing from exceeding the limit for purposes of ordinary improvement.

The motion was then negatived.

The HON'BLE BABOO KRISTODAS PAL said the next amendment he had to move in section 53 was the insertion of the following words at the end of the section:—

"If the ward is a widow above the age of twenty-one years, entitled to the estate for her life only by virtue of the will of her deceased husband or otherwise, such surplus, after providing for the expenditure specified in the preceding section, shall, if no such debts as aforesaid be outstanding, be paid to such ward."

In reference to this clause also he had to repeat that there had been an oscillation of opinion in Select Committee. This clause had been inserted in the first amended Bill at his instance; but when the Bill was referred back to the Select Committee, the majority of the members were of opinion that the clause should be left out. His object in proposing this clause was that in some cases a testator left his property by will to his widow for her life, and because the female was deemed incompetent for the management of the estate, the Court of Wards took over the management and deprived her of the benefit accruing under the will by limiting her monthly allowance to some fixed sum, and carrying the profits to the credit of the estate. The object of the Court of Wards in a matter like this was certainly to benefit the estate. But he submitted that the first duty of the Court of Wards was to carry out the intentions or directions of the testator. If it were the will and desire of the testator that his widow should enjoy the full benefit of the surplus proceeds of the estate, he did not think, whether in law or in equity, that the Court of Wards were competent to defeat the object of the testator and deprive the widow of the full benefit of the profits of the estate. It might be said that the widow might waste the profits which might be derived from the good and economic management of the estate by the Court of Wards. Well, that might be so. The widow might not properly use the profits which might come to her; but were there not many other cases in everyday life in which such waste was committed by persons who came to the possession of large estates, and the courts could not ordinarily interfere with the action of persons who

thus profligately wasted their property? Who could say that a ward who was a minor now under the Court might not, when he came of age, waste the estate which the Court of Wards, after considerable trouble and economy, had accumulated for the benefit of the ward? But in the cases to which his amendment would apply, the estate could not be wasted; it was only the profits, which were the widow's by the will of her husband, that she could waste if she were so minded: the estate remained in the hands of the Court of Wards. If a minor came of age, he might waste his estate and reduce himself to beggary; whereas a widow, even if she were a profligate character, could not waste the estate, but only the profits derived from the property. On the other hand, if she were a sister of charity, if she were a friend to the cause of humanity, if she were religious and benevolent, how much good might she not effect by a proper use of her money? For instance, who had not heard how the Maharanee Surnomoyee or Maharanee Surrutsoondree had been using the resources of their vast estates for the benefit of humanity and the improvement of the country; and who knew whether there might not be other widows who might not in the same way employ their means for the benefit of their neighbours or their countrymen?

Then he was answered in Select Committee that if, under the law, a widow had an absolute right to the profits which her husband had bequeathed to her under a will, she could assert her right in a court of justice. But he would ask, why should the Legislature step in and sanction a course of action by the Court of Wards which tended to defeat a right which the widow possessed under the ordinary law of the land?

He thought it would be admitted that it did not behove a great and powerful Government like ours to drive helpless widows to litigation for the assertion of their lawful and just rights. Just consider the position of the widow with life interest in an estate under the Court of Wards. In the *first* place, the Court of Wards took over the management of the estate, and the widow was deprived of all resources to carry on litigation; in the *second* place, if she were to sue, she must sue through the Court of Wards, because she had become a ward; and *thirdly*, when the suit was decided, when her right was admitted, who, after all, had to pay the expenses of litigation? It was the estate, or, in other words, it was the widow; for during her life she was the legitimate owner of the profits of the estate. From whatever point of view the question was looked at, it would be seen that it would be but bare justice that the Court of Wards should give to the widow what legitimately belonged to her under the will of her husband. He did not say that they should in any way remove the hands of the Court of Wards from the management and improvement of the estate, because the widow had only a life interest in it. Let all legitimate expenses be deducted from the proceeds of the estate, and whatever balance was left, let it be made over to her who had the greatest claim to it.

A notable case occurred lately in Chittagong, and made some noise at the time. It was the well-known case of Nyantara. He found, from a resolution of the Government in 1874, that this Chittagong case came under the management of the Court of Wards in 1873. It appeared that, under a will executed

by the husband of Nyantara, she was left the entire profits of the estate during her life. The Board of Revenue in their report wrote as follows :—

"On the death of the late Baboo Grish Chunder Rai, one of the richest zemindars in the district of Chittagong, his estate devolved by a will upon his wife, Srimati Nyantara. Shortly after her succession to the property, the Collector, having learnt that the people about her were mismanaging the estate and taking advantage of her incompetency, deputed a Deputy Collector to inquire into the matter and report. The Deputy Collector reported her to be incompetent to manage her property; it was therefore first attached early in 1873, and was subsequently brought under the Court's management under Act IV (B.C.) of 1870. The ward is 27 years old."

It would be seen from the resolution of the Government of Bengal that, after paying the Government revenue, and also the rent payable to the superior landlord, the receipts of the estate did not amount to more than Rs. 18,000 per annum. The cost of management last year came to about Rs. 2,781; the sum of Rs. 500 was allowed for the education of the ward's adopted son, and Rs. 1,000 for the maintenance of her mother-in-law, leaving a surplus of Rs. 13,719. Out of this sum the widow, who had a life interest in the estate, was given an allowance of Rs. 2,129 per annum, or Rs. 177 per mensem.

But this was not all. It would be seen that while the widow had been deprived of her life interest, and had been made to be content with an allowance of Rs. 177 only, there was a balance of not more than Rs. 4,700 in favour of the estate in hand. After three years' management the surplus amounted to Rs. 11,500 per annum, and the whole of that sum had been spent doubtless for the benefit of the estate, though the accounts given in the resolution were not quite clear, but certainly to the deprivation of the just right of the legal heir. But let that pass. What appeared to be most amazing was that, while the widow had a life interest in the estate, and there were large balances available, her applications for extra religious expenses and doctor's fees were not allowed. She was told that the "expense must be met from the fixed budget allowance." He submitted that in matters of this kind the Court of Wards should not be allowed any discretion. Law and justice required that what belonged to the widow in right ought to be made over to her in fact.

Lastly, it was urged in Select Committee that it was not the function of the Legislature to legislate for a matter of that kind; that it was not quite germain to the Bill. Now, if it was the object of this Bill to lay down instructions and directions for the guidance and control of the Court of Wards, surely it would not be foreign to its purpose to declare that the Court should give effect to the wishes of a testator when an estate so bequeathed would come under its management. Indeed, if it was considered necessary and reasonable that instructions should be given to the Court as to how to apply the funds of the estate, how to meet liabilities, how to expend the surplus, and so forth, it was quite within the scope of legislation that instructions should likewise be given to it to make over to the widow of the testator the profits of the estate which, under the will of her husband, she had a right to receive. He therefore moved that the words, notice of which he had given, be incorporated with section 53.

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The HON'BLE MR. REYNOLDS said he hoped the Council would not accept this amendment, as its acceptance would be tantamount to an abdication by the Court of Wards of its proper duties and functions. The hon'ble member had cited the cases of certain ladies whom every one would admit to be ornaments to their sex and their country, and who had managed their estates with exceptional ability. MR. REYNOLDS would be the last person to deny that many ladies had shown themselves excellent managers of property; but he must point out that the estates of such ladies would not come under the operation of this Bill. A woman, as such, was not disqualified for the management of her estate; she was only disqualified if she was found incompetent to manage her affairs, and there appeared to him to be some inconsistency in declaring a lady incompetent to manage her property, and then giving to her the disposal of the whole surplus proceeds of her estate.

The amendment of the hon'ble member applied to all widows without exception or qualification, so long as they possessed a life interest. But the widow might be a mere child, quite unfit to have the disposal of large sums of money. He was not putting a merely hypothetical case, but was referring to an instance which fell within his own experience as a Collector. It had become his duty on one occasion to take charge of an estate under circumstances to which the amendment of the hon'ble member would have exactly applied. The proprietor was a widow of the mature age of eleven years; she had a life interest in the estate under her husband's will, and the income of the property was about Rs. 40,000 a year. In that part of the country the incidence of the Government revenue was very light, the estate was not encumbered with debt, and the expenses of management were not large. As far as he recollected, the surplus income was about Rs. 2,000 a month. He thought it could not seriously be contended that such an income as this ought to have been handed over to this young lady, whose only notion of the value of money probably was that money was an useful medium of exchange for toys and sweetmeats.

But there was another consideration against the adoption of this amendment. The widow, whose property was under the management of the Court of Wards, would have a son, either natural or adopted, to whom the estate would descend on her death. But, under section 4 of the Bill, this son would also be a ward of the Court, and the Court was bound to administer the estate in his interest as well as in that of the widow.

But if the amendment of the hon'ble member were carried, if the whole surplus might be spent, he would not say at the discretion, but at the caprice, of a weak and incompetent female, it might reasonably be expected that no improvements would be made, that no money would be invested, and that the estate would descend to the heir in an impaired and impoverished condition. That, he thought, was precisely the state of things which it was the duty of the Court of Wards to prevent. And he must confess to a feeling of some surprise at finding the hon'ble member at one moment so chary of the surplus that he would not allow the Collector and the Commissioner to spend more than five per cent. of it, and the next moment so liberal with it that he

was prepared to hand the whole of it over to a person who would not be qualified to spend it wisely or well.

He appealed to the Council not to nullify the Bill by accepting this amendment. Let the widow have an adequate provision, let her even have an ample and liberal allowance; but, in the interests of the estate and of those who would inherit it after her, do not give her unrestricted power to deal as she pleased with the whole surplus income.

The Hon'ble Mr. Bell said, as a member of the Select Committee, he wished to make one or two observations on this amendment. The Committee to whom the Bill was first referred unanimously adopted the amendment now proposed. Of that Committee his hon'ble and learned friend the Advocate-General was a member. On the Bill being referred back to the Select Committee, his hon'ble friend opposite (Baboo Kristodas Pal) and himself were the only two members of the former Committee who were present on the day when this question was again discussed, and the consequence was that they were outvoted on a proposition which had in the first instance been unanimously adopted.

It seemed to him that the question was one which did not admit of any argument whatever. Take the case of two brothers—one having had an income of a lakh of rupees from land, the other an income of a lakh of rupees from Government paper. Both of them died, and both left wills in favour of their widows. The one left his widow a life income of a lakh of rupees from land, the other an income of a lakh of rupees from Government paper. The property from which the income was produced being in the one case land, the Collector took charge of it, on the ground that the widow was not competent to manage the property; the other lady, whose income was derived from Government paper, could not be interfered with, unless the civil court pronounced her insane. But the object of the Court of Wards' Act was simply to protect the property of incompetent females, and not to deprive them of the income of the property to which they were entitled under their husbands' will. The Court of Wards' Act was originally passed in 1793, and the reason for taking charge of the estates of minors and incapacited persons was that the Government revenue might be paid and the estate might be preserved in the family of the proprietors. But there was no reason why, because the Court of Wards took charge of an estate to see that the revenue was paid and that the estate was properly maintained, they should not pay the income to the person who was legitimately entitled to it. His hon'ble friend on the right (Mr. Reynolds) had instanced a case from Mymensingh where a large property was left by will to a female minor, and the Court took charge of the estate, and he asked whether the Court ought, under these circumstances, to pay the whole income of the estate to the minor. But the Court in that case would take charge of the estate, not because the proprietor was a female, but because she was a minor. But when a Hindoo lady was entitled to a particular income, she could not by law be deprived of that income simply because the Court of Wards might consider that, owing to the particular circumstances of the property, she was not fit to be trusted with its management. Mr. Bell did not base his contention on the instances put forward

by his hon'ble friend the mover of the amendment. That case might be explained by the fact that the lady had adopted a son, and hon'ble members were aware that by Hindoo law the moment a widow adopted a son the estate passed into the hands of the son, and therefore it was possible that the lady in that case lost the estate owing to the adoption.

MR. BELL supported the motion simply on the broad ground of justice. If an estate was left to a lady for life, she was entitled to the income from it, and he could not conceive how she could be deprived of it. But if it was regarded as a mere matter of expediency whether the yearly income should be paid to the widow to be expended in those acts of charity and religious observance to which the Hindoo religion attached so great importance, or should be accumulated in the treasury of the Collector to be squandered by the next heir, he for one would undoubtedly prefer to see the money paid to the widow. But it seemed to him to be not a question of expediency, but a matter of simple justice. The income was the widow's, and he submitted that she ought to have it, and he should therefore support the amendment.

The HON'BLE MR. SCHALCH said the addition which was proposed was approved by the Select Committee, but was afterwards omitted at a second meeting. It had not yet been proved whether their insertion was necessary or not, as it would be in the power of a widow to obtain the order of a court that she had a right to the whole of the profits, and she would then receive the whole amount. The Committee therefore left that question to be settled by a law court, and did not think themselves justified in making any provision in the Bill.

HIS HONOR THE PRESIDENT thought that the discussion had somewhat wandered from the subject. A great deal had been said about the law and justice of the case, and it was argued that because the widow took under a will, therefore we were bound to pay over to her the whole of the profits. There was no single remark which had been made with reference to a widow which would not apply with equal justice and force to the case of any other minor. The estate of a widow did not come under the management of the Court of Wards because she was a female, but because she was an incompetent female; therefore, the ground for dealing with her was capability or otherwise of acting in the management of the estate. The Court of Wards could only interfere if the woman was incapable of managing her own affairs. Her case was no more affected by the form in which the property was left than in the case of estates of male minors. As the amendment now stood, he gathered that it would apply not only to persons who were disqualified, but to persons under age; therefore, the result would be, if the amendment were adopted in its present form, that even where the widow was a minor it would be necessary to pay over to her the whole of the profits of the estate. He must say that he was not prepared to admit that that was a proper discharge by the Government of its position as trustee of wards' estates.

The HON'BLE BABOO KRISTODAS PAL observed that as long as the widow was a minor she could not receive the surplus profits, because, as a minor, the Court would administer the estate and carry the surplus to the credit of the

estate. She could not obviously claim to spend the profits during nonage. But after she had attained her majority, though she might not be competent to manage the estate, she would certainly be competent to enjoy the profits. In the case put by his hon'ble friend Mr. Bell the position of the two widows was identical: the one was left the income derived from landed property and the other the interest of Government securities; and BABOO KRISTODAS PAL did not see why the widow to whom were left the rents and profits of an estate should be deprived of what was bequeathed to her by her husband's will merely because she was considered incapable of managing the estate.

The Council then divided:—

Ayes—5.	*Noes*—5.
The Hon'ble Nawab Meer Mahomed Ali.	The Hon'ble Mr. Brown.
" " Baboo Kristodas Pal.	" " Baboo Ram Shunker Sen.
" " " Isser Chunder Mitter.	" " Mr. Reynolds.
" " Mr. Ravenshaw.	" " " Schalch.
" " " Bell.	His Honor the President.

The numbers being equal, the President gave his casting vote with the *Noes*.

So the motion was negatived.

The HON'BLE BABOO ISSER CHUNDER MITTER moved the addition to section 50 of the following words:—

"and, subject to the approval of the Board, in payment of such charitable and other allowances as were paid out of the proceeds of the estate before it came under the management of the Court, or such allowances or donations as the Court may authorize to be paid."

He said that, as a matter of fact, expenditure not provided for in sections 50 and 70 was actually incurred. There was no provision for the usual ceremonies and performances which were ordinarily observed in native society. In the Gobardanga estate the late proprietor had founded charitable dispensaries and schools, and they had continued to be maintained under the management of the Court of Wards. Then, in many cases Koolins married into Hindoo families and were oftentimes supported by the head of the family. Then there were charities which ought to be maintained. These charities were referred to in the last resolution in reference to the Court of Wards' estates. There was an instance lately of a marriage in the family of the religious preceptor of a minor, and it was the custom of the family to give presents on such occasions. Items of expenditure such as these were not provided for under the Act. Section 86 provided that the Collector was personally liable to be sued by a ward on attaining his majority for any acts done without authority. Now, if such expenditure, which was incurred as a matter of fact, was not legal, the Collector made himself responsible to be sued hereafter. The object of this amendment was to legalize such customary expenditure.

The HON'BLE BABOO KRISTODAS PAL enquired whether the amendment would include expenditure on account of charities connected with religion. In the Paikpara estate, for instance, these charities had existed for generations, and it was very desirable that they should be continued. He would also

suggest that allowances for these purposes should be paid out of the ten per cent. fund. If legal sanction were given to expenditure for charitable purposes without any limit, he did not know to what extent the income might be diverted to such purposes. It was therefore of the utmost importance that there should be some limit to expenditure of this description, and he thought that the ten per cent. fund for improvements should also cover the allowances contemplated by the amendment of the hon'ble member. He would move the addition to the amendment of the following words:—

"and that such allowances and donations shall be paid out of the ten per cent. fund provided for in section 53."

The HON'BLE MR. BELL objected to the allowances being paid out of the ten per cent. fund. The whole of the fund might be absorbed in these charitable allowances, and nothing would then be left for improvements.

The motion as amended was then put and negatived.

The HON'BLE NAWAB MEER MAHOMED ALI moved the omission from section 60 of the words from "provided also" down to "eligible," and the substitution for them of the following words:—

"and that none but a person of the Mahomedan religion shall, except in the case of a testamentary guardian, be appointed guardian of a Mahomedan ward."

"Provided also that none but a person of the Hindoo religion shall, except in the case of a testamentary guardian, be appointed guardian of a female Hindoo ward, preference being given to female relatives if any such be eligible."

He said that this section appeared to be in conflict with the doctrines of the Mahomedan religion. Under the Mahomedan law no one could be appointed the guardian of a ward except a person of the same religion. In this section it was only provided that the guardians of the female ward should be of the same religion as the ward, and we proposed to extend that principle to the case of male wards also. Hitherto he had never seen an instance of a guardian of any other religion having been appointed to a ward of the Mahomedan religion.

The motion was agreed to.

The HON'BLE BABOO ISSER CHUNDER MITTER moved the omission from section 72 of the words "and for the default in payment of the revenue of which the ward's share may, under the provisions of Act XI of 1859, be liable to sale," and the substitution for them of the words "and which in the interest of the ward it may be deemed proper to acquire." The object of this amendment was to provide for the purchase of a co-sharer's property whenever it was considered desirable to do so in the interest of the ward.

The motion was agreed to.

The HON'BLE NAWAB MEER MAHOMED ALI said that, according to the general Limitation Act, twelve years were allowed for the institution of suits relating to immoveable property and three years in the case of moveable property; whereas, under section 84, only one year had been allowed for the institution of claims to wards' estates. He thought that, instead of selling such an estate after the expiration of one year from the death of a ward, arrangements might be made for its management until the determination of the right to the property

in dispute. He would therefore move the substitution of the following for section 84:—

"If no suit be instituted within one year after the death of the ward to determine the right to the property in dispute, and the Court of Wards do not think fit to continue the charge and the management of the property, the Court of Wards may apply to the District Judge to issue notices of claimants, and the District Judge, on receipt of such application, shall give the said claimants notice to appear before him, and shall decide summarily to whom the Court is to make over the property."

The Hon'ble Baboo Kristodas Pal said he did not agree in the propriety of making a provision of this kind. He thought that if a claimant had any right to the property, he should come forward and institute a suit. A summary procedure for the determination of such claims would not be advisable. The Court of Wards had power to make over the property to any claimant, subject to the sanction of the Board. A dissatisfied claimant had a right of appeal to the Board of Revenue; whereas, under the amendment, the claimant must be satisfied with the summary jurisdiction of the District Judge. As far as he was aware, the discretion left to the Court of Wards had not been abused. For his own part, he did think that the power to sell the property ought to be restricted. He thought that in no instance should the landed property be sold without the consent of the parties concerned. If the Court of Wards did not wish to keep the estate in charge, and desired to relieve itself of its management, it could, under the authority of the law, make over the property to any claimant it thought fit; but to sell the property because it might not be satisfied with the claim of the claimant was not, he thought, just. He should observe that this as well as other points suggested by the examination of the existing Act were not taken into consideration, because it was an instruction to the Select Committee that they should confine their attention to those points only which had been referred to them. He thought that those who had given their attention to the existing law would agree with Mr. Justice Markby, who remarked in one of his lectures on Indian Law that "one could not help being surprised at the want of precision in the language of this Act."

The Hon'ble Mr. Bell said that perhaps it would be more convenient that the consideration of this section should stand over. If the amendment was adopted, it would very seriously conflict with an Act passed last session, in which the Council provided for summary inquiry into cases of disputed succession. It seemed a startling provision that the Court of Wards should have power to sell an estate; but he believed the power had never been exercised.

The further consideration of the section and of the Bill was postponed.

PROVINCIAL PUBLIC WORKS CESS.

The Hon'ble Mr. Reynolds moved for leave to bring in a Bill to provide for the levy of a rate for the construction and maintenance of provincial public works in Bengal. He said the financial statement which was made in the Council of the Governor-General on the 15th March, and the debate which subsequently followed, would have prepared the Council for some such measure as he had the honor to bring forward to-day. The Government of India had

determined to develop still further the system of provincial finance established in 1871, and to make over to the management of the local Governments several departments of revenue which had hitherto been under the control of the Government of India. This transfer, as far as it related to departments which came under the head of what was termed ordinary budget expenditure, would not in itself require any increased taxation. The Government of Bengal had accepted a reduction of Rs. 5,90,000 from the existing grant; but it was anticipated that this sum would be made up by greater economy of administration and by the natural growth of some of the branches of revenue which had been transferred, more particularly the great departments of Excise and Stamps.

But concurrently with this, it had been determined to render the local Governments responsible for the cost and management of extraordinary public works—that was to say, such public works as railways and works of irrigation—which had been constructed with borrowed money and had not been paid for out of the revenues of the year. These works were the three great irrigation canals on the Soane, in Orissa, and at Midnapore, and the State railways of Port Canning, Nulhattee, Northern Bengal, and Tirhoot. These works were of the greatest provincial utility, but they were at present carried on at a financial loss. The working expenses on the canals exceeded the revenue at present realized by about one and a half lakhs, without taking into consideration the charges for interest; and though the traffic receipts from the railways were considerably in excess of the working expenses, they fell very short of the charges for the working expenses and the interest together. It should be explained that the Government of India did not propose to render this Government responsible for any accumulated arrears of interest on account of past years. The Government of Bengal would take over the works as they stood, and would be responsible for the payment of simple interest on the capital outlay up to date, and for the provision necessary for future working expenses.

Calculated upon this basis according to the figures which had been furnished, and which might be subject to modifications, the charge for interest upon irrigation works amounted to Rs. 20,69,000, and the working expenses exceeded the receipts by about Rs. 1,50,000, making a total charge of Rs. 22,19,000 on account of canals: The charge for interest on account of State railways was Rs. 8,21,000, and the net earnings, or the amount of traffic receipts in excess of the working expenses, was Rs. 2,93,000, reducing the total charge to Rs. 5,28,000. Taking the two heads of irrigation and railways together, the sum for which the Government was responsible amounted to Rs. 27,47,000.

It must be evident to hon'ble members that it was not possible by any reduction of expenditure, or by any normal growth of the present resources of revenue, to provide for a liability of this amount, and that it was necessary to take special measures for raising additional revenue. It might be added that even the sum he had mentioned hardly represented the entire liability; for provision must be made for the completion and extension of those works which were still unfinished and for such new works as might be necessary in

Bengal. And, moreover, it would not be prudent for the Government to calculate its ways and means on a scale which would leave just an equilibrium between income and expenditure, and would barely avoid a deficit at the end of the year. It was necessary for the Government of Bengal to do something more than this, and to have a surplus and a reserve fund in hand. It had been laid down by the Government of India that it was necessary to introduce a system of provincial and local responsibility for the provision of local relief in the event of a famine. It was true that Bengal was happily less liable to the contingency of famine than other parts of India; but the two great calamities which had befallen these provinces within the last twelve years must have shown that the contingency of famine was one which we could not afford altogether to overlook. He believed hon'ble members were aware that in the famine of 1874 the Government of India, besides the direct expenditure which it incurred in the purchase and transport of grain, contributed about a hundred and eighty lakhs towards relief works in the distressed districts. Under the policy which had now been declared we could not expect such assistance in future, and we should be called upon to meet local requirements from local resources. He thought he was within the mark when he said that it was necessary for the local Government to raise from Rs. 30,00,000 to Rs. 35,00,000 in excess of its present receipts, and this could be done only by additional taxation.

It was then to be considered how far and by what means it might be possible to do this. Perhaps it might be thought of little use first to show that taxation was inevitable, and then to consider how far it might be possible. But he believed he was justified in saying that the local Government would not have consented to accept this financial responsibility if it had not been satisfied that the necessary funds could be raised without unduly adding to the burdens of the people. He did not know whether it had been sufficiently taken into consideration that the people of Bengal were perhaps at present the most lightly taxed people of any country in the civilized world. Almost the only tax which the masses of the people were called upon to pay was the salt tax. In one sense no doubt this was a high tax—that was to say, the amount of the tax bore a large proportion to the cost of production of the article taxed. But that it was not felt as a burden by the people was shown by the fact that the consumption in these provinces was fully sufficient for all the requirements of necessities and health. The consumption of salt in these provinces was about ten pounds per head of the population per annum, and it was doubtful whether the consumption would be much larger than this if salt was not taxed at all. The salt tax, then, even as it stood at present, was no oppressive burden, and the Government of India had expressed their intention of reducing the tax as soon as it was possible to do so. Amongst the other customs duties, the only tax largely paid by the people of Bengal was the duty upon imported cotton goods, and he need not remind hon'ble members that it was the declared policy of the Government of India to remove this tax as soon as financial considerations would allow of its abolition. The revenue from excise yielded in these provinces a sum of about Rs. 62,00,000 among a population of sixty-

The Hon'ble Mr. Reynolds.

two millions; it was a revenue to which no one need contribute unless he liked; and, on the whole, the sum amounted to one rupee per annum to every ten of the population. The revenue derived from stamps yielded about Rs. 90,00,000, the greater part of which was derived from court fees, which the people could to a great extent avoid if they pleased, and after all the stamp revenue was only about from two to two-and-a-half annas per head of the population. Direct taxation did not exist in Bengal. The present road cess could not be looked upon as a tax; it was assessed by the people, administered by the people, and expended by the people. It was nothing more than a scheme by which legislative recognition had been given to an arrangement for allowing the inhabitants of a district to expend a part of their surplus wealth in the improvement of their own property. The financial burdens of the country being so light as they were, he did not think any apprehension need be felt that there would be an excessive strain on our resources by raising such a sum as Rs. 30,00,000 or Rs. 35,00,000 from so great and opulent a province as Bengal.

The statement of the Financial Member of Council, while recognizing the necessity for additional taxation, indicated two main principles which the Government of India desired to see maintained in any measures which might be brought forward. The first of these principles was that recourse should be had to the extension and expansion of the present means of raising money rather than to new and unfamiliar forms of taxation; the second was that the cost of the works should, as far as possible, be recovered from the persons who primarily benefited by them. In the two measures which would be proposed to the Council to-day it had been the object of the Government to recognize and maintain these two principles. The second of these principles had more relation to the Bill which stood in the notice paper in the name of his hon'ble colleague Mr. Ravenshaw. The Bill which he (Mr. Reynolds) was now asking for leave to introduce was founded on a system which was already in force, and which was understood and appreciated by the people.

It was proposed to make the road cess valuations the basis of a new additional assessment, the proceeds of which would be devoted to the construction and maintenance of provincial public works. The rate of the cess would be fixed by the local Government from time to time for each district, but it would never exceed the rate of half an anna in the rupee, and half of it would be paid, as the road cess was at present paid, by the ryot, and the other half by the zemindar. The time and the manner of making payments would be the same as under the existing Road Cess Act. The proceeds would be paid into the public treasury, and would be devoted to the construction and maintenance of these works. It appeared to Mr. Reynolds that some measure of this kind was better suited perhaps than any other which could be devised for meeting the necessity which we were now called upon to face. The incidence of this tax upon individuals would be light, because the tax would be distributed over a large area. Every one would know with certainty how much he would be required to pay, and there would be no inquisition into the profits or income of any one. And even if the tax was fixed at the highest rate which

would be authorized by law, a ryot who paid a rental of Rs. 64 per annum would only be required to contribute one rupee towards this cess, and this was a sum which such a ryot might reasonably be expected to be able to afford without any difficulty or distress.

He did not propose to go into any further details at present. The Bill had been drafted and would be placed in the hands of members in a day or two; and if leave was now given to bring it in, he proposed to move on Saturday next that the Bill be read in Council and referred to a Select Committee.

The motion was agreed to.

RATE UPON IRRIGATED LANDS.

THE HON'BLE MR. RAVENSHAW moved for leave to bring in a Bill to provide for the levy of a rate upon irrigated lands in the Lower Provinces of Bengal. He said that the hon'ble member to the right had given a fair and able exposition of the position of the Government at the present time, and it was perhaps unnecessary that he should add much.

Under the late decision of the Government of India to enforce provincial responsibility for the financial results of public works constructed at the public expense for local and provincial purposes, the sum due to the Government of India from the province of Bengal had been estimated at Rs. 27,47,000. Of this amount, Rs. 22,19,000 was due for canals and irrigation works, as representing the net working expenses plus charges for interest. The gross revenue derived from water-rates and other direct returns had, under the existing system of voluntary leasing, been estimated at Rs. 4,25,000 only for the year 1877-78—a sum which did not cover working expenses.

We had three great canal schemes in more or less active prosecution. These canals commanded an irrigable area of 690,000 acres, and it was expected that with vigorous prosecution of the works the irrigable area would annually increase, and in five years would have reached 1,121,000 acres. Of the 690,000 acres now irrigable, an insignificant proportion had so far been leased under the existing voluntary system, and there was no immediate prospect of these costly and necessary works yielding an adequate return. Drought and flood recurred periodically, and every year disclosed more and more the vital necessity for vigorous prosecution of canal and irrigation works, which were to India as arteries of trade and communication and veins which nourished the thirsty soil. He had personal experience in Orissa, extending over many years, of the frightful misery and loss caused by famine and flood; but he regretted to say that, notwithstanding the dire misfortunes and sufferings the people had sustained, they were still very backward in availing themselves of irrigation, even when the water was brought to their door.

Similar difficulty had been experienced on the Midnapore and Soane canals.

This backwardness in leasing for water and the urgency of financial considerations rendered it immediately necessary to move in the direction of helping the people to help themselves. Irrigation, drainage, and protection from flood must go hand in hand, and any measure it may now be necessary to propose would involve provision of these three advantages in exchange for

a moderate, but compulsory, payment. In proposing to levy a compulsory rate, we should be giving the people more than an equivalent for any payment exacted.

The most recent inquiry, made with great care in Orissa last season, showed that the average value of rice raised on an acre of irrigated land exceeded the value of rice raised on an acre of similar unirrigated land by Rs. 3-3 per acre. This was wholly due to irrigation, and these results were obtained in a season of favourable rainfall.

The Bill he now asked permission to bring in might be correctly indicated as likely to afford security and profit to every landlord and cultivator within the irrigated tracts to which the Bill would apply. In fact it was proposed to give to each person holding irrigable land a value of Rs. 3-3 per acre, and to insist on a moderate proportion of this value being contributed as an insurance rate to enable Government to continue to afford protection from drought, flood, or famine in the future.

His Honor the President said, I think it will be expected perhaps that I should say something in respect of these measures which are now before the Council, and for the introduction of which leave has been asked. It has been explained by the Hon'ble Mr. Reynolds that we have been compelled to ask you to assist us in raising a considerable sum of money in order to give effect to the measures which we have been directed to carry out by the Government of India. The Government of India have given to the Provincial Government a very considerable amount of freedom in the future in the management of its own affairs; but it has also, as the hon'ble gentleman has explained, thrown upon us the responsibility of raising the money necessary to meet the interest upon the works already constructed and about to be constructed, and to carry out such further works of improvement as the Provincial Government may consider necessary.

As has been pointed out by my hon'ble friend, in doing this the Government of India has not charged us, as it might have done, if it could be shown that the works were immediately remunerative, with the accumulated interest upon the capital of these works. It has wiped that off, and has allowed us to start fair with the works as they stand, and has merely imposed upon us the responsibility of paying the current interest which may arise year by year.

There is no use in our discussing the correctness of the principles by which the Government of India has been guided in this matter, because the thing has been done, and cannot be undone by anything we can say in this Council. For my own part, I must say that however painful and disagreeable it may be to me to commence my administration of these provinces by imposing further taxation, I, for my part, personally feel that the principles of the Government of India are correct in the abstract. Indeed their application would have fallen upon us very lightly, if it had not been for the accident that we are clogged at starting by those two great schemes—the Orissa and Midnapore schemes—which have been taken over by the Government of India from a private company. No doubt, as my hon'ble friend Mr. Ravenshaw has stated, the Orissa Canals have already done an enormous amount of good to immense

tracts of country. They have brought into cultivation large areas of land which were hitherto arid plains; and where the water has been used, these plains have been converted into gardens. But the people, though they have seen the benefit derived by their neighbours from using the water, have not yet learned by their experience, and they abstain from using the water up to the very last moment that it is possible to do so, and until they are pressed by real drought bearing upon them. But we are compelled to be ready for them, and keep up the works and establishments, and to be prepared at the very last moment to supply the water which the people demand. This being so, it is only reasonable that the Government should call upon the people to contribute towards the expenses of the establishments and to make provision for keeping up these works.

I have spoken on the subject to many experienced revenue officers and native gentlemen, and I have found that they all concur in thinking that the principle of levying a moderate compulsory water-rate is a reasonable and proper one; and it is one to which the people, although of course they would object to any form of taxation, will not raise any substantial objection. I cannot make them pay the whole cost of the work, because, as I have said, the expenditure has been extravagant and wasteful; but I must levy all I can from them, and the balance required to meet the interest on the capital locked up in these works, as well as the interest on new railways which have not yet commenced to pay, and the first charge on the new cheap railways which we have to construct, and this I hope, as explained by the Hon'ble Mr. Reynolds, to meet by a general provincial public works cess, which I trust will cover the deficit and provide us with a small margin of reserve which will keep us out of difficulties, and, as to past expenditure, enable us to press on the work of providing such cheap railways as will confer the greatest possible benefit to the province. I shall take care in future that no capital is expended on railways and irrigation works without the most positive and conclusive evidence that they will yield the interest on the capital which is being expended on them. But it must be remembered that we must always have some money in hand to pay for the construction of new works, and we must keep a working margin in hand; therefore it will not do to cut down the amount we are to raise to the bare sum which will be required for the interest on the works which are already completed.

The road cess has now been tried, and has worked well and unoppressively; it has been collected without difficulty, and almost, I must say, without any complaint, as far as I have heard. Therefore I think, even if it is considered that there are forms of taxation which are preferable and theoretically open to less objection, it is better to apply the road cess machinery to our purpose and choose the evils which we do know, rather than plunge into evils that we do not know, on the mere chance that they may turn out to be better able to be borne than those from which we now suffer. I think it is better to endeavour to raise our taxation by a rough process which requires no fresh expenditure whatever on extensive establishments, than by a more carefully adjusted system of taxation, involving large assessing and collecting establish-

His Honor the President.

ments and constant interference with the people. Let us raise what we require to raise this year, at all events, by the development of a form of taxation which is now in operation. We are much pressed for time and have not leisure now to commence discussions on the general principles of taxation, but during the year we shall have time to consider whether any other mode of taxation can be substituted for a portion of the cess which shall reach the trading classes. There seems to be a very general opinion that something should be done to put a tax upon the trading classes. I am not in a position now to propose any tax of this sort; but I do quite concur in the view that if it can be done it should be done. I have therefore consulted the Commissioners of Divisions as to whether any such tax can be imposed in Bengal as the license tax which has been passed for the North-Western Provinces; and if we wait, we shall by this time next year have the benefit of the experience of the working of that tax in the North-Western Provinces, and then we can consider whether we can shift any portion of the burden of our present taxation upon any other classes than those on which it now falls.

I expect to be met with the objection that I am imposing the whole cost of carrying out these works upon one particular class, viz. the class interested in the land. But I am sure that no one will deny that it is the land which has benefited more by these works than any other branch of national wealth; nothing has improved so much during my residence in India as the position of the cultivating classes, and nowhere has the position of these classes so much improved as in the neighbourhood of railways and canals which have been constructed, or in those parts of the eastern districts where Nature has provided water communication which has brought the people within easy reach of the large markets. I think there is no reason why those who have profited by these benefits, whether they are natural or artificial, should not be called upon to contribute something out of their accumulating wealth to the assistance of their brethren in the outlying districts, who are now shut out from all markets, and who do not enjoy the same advantages as themselves.

There is one point in respect of which I admit the cess is deficient. It throws upon landlords the duty of collecting the rate, while they have not such facilities as they should have for the ready and prompt realization of their rent and the Government cesses. This difficulty had already attracted the attention of my predecessor, Sir Richard Temple, and just before he left Bengal he recorded a Minute expressing his intention of at once applying for the sanction of the Government of India to pass a short Bill to provide a system for the realization of rent in a somewhat more summary and prompt process than that which now exists. I shall give the subject my best attention, and I may say that I am already in communication with the officers subordinate to me, and I hope it will not be long before I shall be in a position to ask the Council, with the permission of the Government of India, to pass a Bill of this sort. I think that with that Bill the objection of the landlord classes will disappear.

I can only add my hope that, having regard to the difficulties of the position in which I am placed, I shall have the cordial support of the Council in passing these measures, even if they do not think them absolutely perfect. The financial year begins to-morrow, and with it commences all our difficulties and responsibilities, which I must ask you to put me in a position to meet."

The motion was then agreed to.

The Council was adjourned to Saturday, the 7th April.

Saturday, the 7th April 1877.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*
The Hon'ble V. H. Schalch, C.S.I.
The Hon'ble G. C. Paul, *Acting Advocate-General.*
The Hon'ble H. J. Reynolds.
The Hon'ble T. E. Ravenshaw.
The Hon'ble H. Bell.
The Hon'ble Baboo Ram Shunker Sen, Rai Bahadoor
The Hon'ble Baboo Isser Chunder Mitter, Rai Bahadoor.
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor.
The Hon'ble Nawab Meer Mahomed Ali.
The Hon'ble F. Jennings.

COURT OF WARDS.

The Hon'ble Mr. Schalch moved that the Bill to amend the Court of Wards' Act, 1870, be further considered in order to the settlement of its clauses.

The motion was agreed to.

On the motion of the Hon'ble Baboo Ram Shunker Sen, verbal amendments were made in sections 28 and 58.

The Hon'ble Baboo Isser Chunder Mitter moved the addition to section 50 of the following words:—

"and, subject to the approval of the Board, in payment of such charitable and other allowances as were paid out of the proceeds of the estate before it came under the management of the Court, or such customary allowances or donations as the Court may authorize to be paid."

He said the amendment had been put forward on the last occasion, but with an addition suggested by his hon'ble friend Baboo Kristodas Pal. The addition was to the effect that these allowances were to come out of the ten per cent. for improvements. The result was that the amendment was not accepted by the Council, and as it was the opinion of some hon'ble members that the amendment as it originally stood would be a great improvement, he now begged to move it again.

The motion was agreed to.

In section 57 the words "or to the manager or sub-manager" at the end of the section were, on the motion of the HON'BLE BABOO RAM SHUNKER SEN, omitted. The section declared to what persons the manager was to furnish accounts, and the latter part of the section provided that when the property of a ward was situated in different divisions, it should be optional with the Board to order that the accounts for the lands in each district should be submitted to the Collector of that district, or to the Collector in charge of the ward, "or to the manager or sub-manager." The words referred to were, he said, clearly anomalous, and ought to be struck out.

The HON'BLE MR. BELL said he owed the Council some apology for the amendment he was about to propose. It would be in the recollection of hon'ble members that at the last meeting an amendment was carried on the motion of the hon'ble member opposite (Nawab Meer Mahomed Ali) which provided that in the case of a Mahomedan ward no guardian should be appointed unless he professed the Mahomedan faith. That amendment was passed without any discussion, and he believed also without any remark; and he had no doubt that many hon'ble members voted for the amendment without fully considering what the real effect of the amendment was. He did not for a moment mean to say that his hon'ble friend had taken the Council by surprise in moving the amendment, because it had been in the hands of the members two days before the Council met; but it had never been brought forward before the Select Committee, and hon'ble members had not therefore had the opportunity of considering it in all its details and effects. Now, the law on the subject of guardians of minors subject to the Court of Wards as it at present stood, and as it had existed since 1793, was this, that in the case of boys the Court of Wards had the power to appoint any guardian it thought fit; but in the case of female wards, the Court was compelled to appoint a female guardian who was of the same religion as the ward herself. MR. BELL thought that in the case of a female ward, particularly of a ward of the Hindoo or Mahomedan religion, such an arrangement was very necessary. In consequence of the practice of early marriages in this country female wards seldom required a guardian beyond the age of twelve years, because after a female ward was married the necessity for a guardian ceased, as by law the husband was the guardian. The necessity therefore of a guardian in the case of female wards only lasted during those tender years of infancy when the mind was very plastic and impressible, and it was therefore desirable that they should be guarded from those external influences which might interfere with the precepts of their faith.

But the case was different with youths. By a recent Act of the Legislature the age of majority had been extended from eighteen to twenty-one, and the object in thus putting on the age was that the youth might receive a more complete education than could be obtained at the age of eighteen, and that he might go forth into the world better educated and better fitted to perform the duties of life. Now, in the education of wards great attention had always been bestowed, and very deservedly bestowed, on European culture and European science; and in the case of a ward with a large

estate, it was very often found convenient to give him as guardian some gentleman of literary and scientific attainments, who would undertake the proper education of the ward and act at the same time as his guardian as well. When MR. BELL was at Delhi on the occasion of the recent assemblage there, he had had the good fortune to meet with two native noblemen of Bengal who were brought up under private tutors who also acted as their guardians, and he must say that the education they had received, both their mental culture and their physical training, were such as would enable them to contrast very favourably with gentlemen of their own class and position at home.

The amendment which was carried by his hon'ble friend at the last meeting had this peculiar effect: it recognized the propriety of allowing a Hindoo ward to have a guardian of any religion; but in the case of a Mahomedan ward, it limited the selection to persons professing the Mahomedan faith. MR. BELL did not wish to say a word in disparagement of any section of the Mahomedan community; but he thought his hon'ble friend would admit that Mahomedan gentlemen as a rule were not so impressed with the necessity for education in European science and culture as their fellow-subjects the Hindoos were. It therefore seemed to him that the Council would be taking a very retrograde step if they prevented the Court of Wards, in cases in which they thought it expedient, from appointing a European guardian to a Mahomedan youth. The law as it at present stood was the same as it had existed since 1793, and he was not aware that any complaint had ever been made on any occasion that the power which the Court of Wards had of appointing guardians had ever been abused. The only reason for restricting the power in the case of female wards was that their education ceased at a very early age, and that they were only under the guardianship of the Court of Wards during the earliest period of infancy. But in the case of youths it was most necessary that the Court should have an unlimited field of selection, and should not be restricted in appointing a guardian by a provision that the guardian must be of the same religion as the ward.

It was for these reasons that MR. BELL asked the Council to adopt the amendment which he now proposed; it was simply to leave the law as it was at present. It was a law which had worked since 1793 most satisfactorily, and, as far as he was aware, had never been the subject of complaint. He moved that the following be substituted for section 60:—

"Every guardian shall be appointed in the manner hereinbefore provided for the appointment of managers:

"Provided always that none but a female shall be appointed guardian of a female ward:

"Provided also that none but a person of the same religion shall, except in the case of a testamentary guardian, be appointed guardian of a female ward, preference being given to female relatives if any such be eligible. Every guardian shall be subordinate to the Court and to the Collector exercising the duties of the Court under sections 15, 16, 18, and 19.

"Except as provided in section 35, no guardian shall be appointed in any case in which the Court may consider such appointment unnecessary."

The HON'BLE NAWAB MEER MAHOMED ALI observed that although under the existing law a guardian of a different religion might be appointed to a Mahomedan ward, yet practically he believed that it never was done. It appeared

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to him most desirable that a ward should be trained to the manners and customs of his own religion, and if under the existing law guardians were appointed of a different religion to their wards, such a law, he thought, should not be maintained, as it appeared to him to be contrary to the Mahomedan religion. For these reasons he contended that the section should stand as it was amended at the last meeting of the Council.

The HON'BLE THE ADVOCATE-GENERAL said it was obvious that the amendment now suggested would afford a decided advantage, inasmuch as a ward who was wealthy might have a European gentleman appointed as his guardian. The Raj case of Cooch Behar was a conspicuous example of the advantage of such an appointment. It appeared to the ADVOCATE-GENERAL that it was to the benefit of wards that unrestricted power in the nomination of guardians should be given to the Court of Wards.

The HON'BLE NAWAB MEER MAHOMED ALI thought it necessary that, as respects Mahomedan wards, they ought first to be taught their religion and the manners and customs of their race, and education in other matters might follow.

HIS HONOR THE PRESIDENT said he felt that the hon'ble gentleman was under a disadvantage, as being the only Mahomedan member in the Council, and HIS HONOR would therefore gladly have supported him if he saw anything whatever in his proposal which had any real bearing on Mahomedan interests. HIS HONOR could not understand the nature of the objection which had been raised. There was no possible difference between the cases of Hindoo and Mahomedan wards; and if it was right that the selection of guardians in the case of wards of the Hindoo religion should be left to the discretion of the Court of Wards, he could not conceive why it was considered wrong where the ward was of the Mahomedan persuasion. It was true that there had not been many cases of Mahomedan wards having European guardians, but that was perhaps to be accounted for from there having been few large zemindaries belonging to Mahomedan gentlemen under the Court of Wards. But still, unless he was very much mistaken, there had been such cases before, notwithstanding that the hon'ble gentleman declared that he knew of no such case; and there might possibly be again, and if they did not arise, no harm would be done by the amendment now proposed. The provision, moreover, was not compulsory: it simply gave power to appoint a guardian of a different religion when there were special reasons for doing so. In the case of a nawab or zemindar of eminence and wealth, it might be very desirable, and be in accordance with the wishes of the ward's family, to place him under an officer or a gentleman of high attainments. If it was wrong to appoint a European guardian to the Mahomedan, it was equally wrong to appoint such a guardian to the Hindoo, which was a view which no one had ever taken yet. HIS HONOR regretted therefore that he could not support the objection of the hon'ble member.

The motion was then agreed to.

The HON'BLE BABOO RAM SHUNKER SEN said section 66 provided that guardians should render monthly and annual accounts of the expenses incurred

on account of the wards in their charge. He would propose as an amendment that the following proviso be added to the section :—

"Provided that where a fixed allowance is given for the support of a ward, the Court may exempt his guardian, if a female, from rendering such monthly or annual account current."

He observed that there were cases in which it was found impracticable to obtain these accounts from the guardians of minors, notably in cases in which the minor's mother was the guardian and the other members of the family lived in the same house and formed one family with the ward. In such cases guardians had to expend something out of their own pocket in addition to the allowance, and it was very difficult for such persons to give an exact account of the expenses incurred on behalf of the ward. He thought, therefore, that a discretion should be left to the Court to exempt such female guardians from rendering these monthly or annual accounts.

The motion was agreed to.

The HON'BLE MR. SCHALCH withdrew the motion, of which notice had been given, for the insertion of the following section after section 78 :—

"No contract for the marriage of any ward under the age of twenty-one shall be deemed valid without the consent of the Lieutenant-Governor, and no such ward shall marry without the consent of the Lieutenant-Governor obtained previously to such marriage on application made to him through the Court and the Board."

The HON'BLE MR. BELL said his hon'ble friend Nawab Meer Mahomed Ali had moved an amendment at the last meeting to omit certain words from section 84, which authorized the Court of Wards to sell an estate which was not claimed within one year after the death of a ward. That provision certainly seemed a very stringent one, and in the amendment which he now proposed he had provided against the mischief against which his hon'ble friend had intended to guard. The reason why he preferred his own amendment to that of his hon'ble friend was that his hon'ble friend's amendment conflicted with Bengal Act VII of 1876. He would move that the following section be substituted for sections 83, 84, and 85 :—

"If on the death of any ward the succession to his property, or any part thereof, be in dispute, it shall be competent to the Court either to make over such property, or part of such property, to any person claiming such property, or to continue the charge and management of such property, or part of such property, under the provisions of this Act until the right of such claimant has been determined by the Collector under Bengal Act VII of 1876, section 55, or by a competent court.

The motion was agreed to.

The HON'BLE BABOO KRISTODAS PAL withdrew the amendment to section 84 of which he had given notice.

On the motion of the HON'BLE BABOO RAM SHUNKER SEN, verbal amendments were made in the forms in Schedules A and B.

HIS HONOR THE PRESIDENT said it was right to mention that he had that morning at the last moment received a memorial in respect of this Bill. It was from Baboo Prannath Pundit, and was chiefly in reference to objections which the amendments which had been moved by hon'ble members had already removed. There were besides other minor matters discussed in the memorial

which were entirely unimportant. His Honor would observe that if the memorialist had anything particular to suggest, he should have done so at an earlier stage.

The Hon'ble Mr. Schalch then moved that the Bill be passed.

The motion was agreed to and the Bill was passed.

GHATWALI POLICE.

The Hon'ble Mr. Bell moved that the report of the Select Committee on the Bill for the regulation of the ghatwali police in the districts of Bankoora and Manbhoom be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. He said that when he had the honor to introduce the Bill he had explained the circumstances which had rendered the present legislation necessary. He did not intend to trouble the Council by again adverting to those circumstances. He should content himself with explaining what the action of the Select Committee had been. The Bill as now settled related merely to the district of Bankoora, and it was confined to one subject—the regulation of the ghatwali police in that district. Hon'ble members were aware that a considerable body of police officers called ghatwals had for many years existed in Bankoora. As far as our information extended, they owed their origin to the time when the pergunnah of Bissenpore was under the executive control of the Rajah of that place. During the times of anarchy and disorder which prevailed towards the end of the Mogul dynasty a number of predatory tribes harassed the country, and it was supposed that the Rajah established these ghatwals to resist the incursions of those hostile marauders and to protect the persons and property of travellers and merchants who traversed the high roads of the district. For the support of these ghatwals grants of land were assigned, and these grants were held on a twofold condition—firstly, the payment of a small quit-rent; and secondly, the performance of police duties. When the executive control of the district passed from the Rajah of Bissenpore to the British Government, the Rajah found considerable difficulty in dealing with these ghatwals and in collecting his quit-rent from them. As the quit-rent was included in the assessment of the pergunnah, the Rajah naturally considered it hard that he should be compelled to pay the Government revenue with unfailing punctuality, while he was unable to realize the quit-rent from the ghatwals. On this an agreement was entered into by which the Magistrate undertook to collect the quit-rents and credit them to the Rajah, and in return for this concession the Rajah made over to the Magistrate the entire control and management of these ghatwals. This happened in the first years of the century, and since then the quit-rent had been paid to the Magistrate, and the appointment and dismissal of the ghatwals was vested exclusively in the Magistrate's hands. Unfortunately, when the ghatwals were made over to the Magistrate no very correct record was made of the duties which they had to perform. But in those days the omission was of little importance. From 1806 to 1872 the ghatwals performed whatever duties they were required to perform, and although numerous ghatwals were dismissed for acts of insubordination or misconduct,

there was not on record an instance in which an appeal was made to the Civil Court. But in 1872 serious differences arose between the ghatwals and the Magistrate. There had been a great increase of dacoity in Bankoora, and the District Superintendent of Police attempted to turn the ghatwals to better account by requiring them to patrol the roads. The ghatwals resisted the order, and various ghatwals were dismissed. This dispute regarding the patrolling of roads led also to other differences, and the consequence was that the Magistrate was in a great number of instances taken into the Civil Court, and the Civil Court was asked to determine whether the services which the Magistrate required the ghatwals to perform were services which could legally be required of them or not.

MR. BELL submitted that no body of police could be efficiently managed if, whenever an order was passed, the police officer was at liberty to go to the Civil Court and ask whether the order was one which he was bound to obey. This result, so disastrous to discipline, was certainly owing to there being no clearly defined and settled rules to which both the Magistrate and the ghatwals could appeal to know what they could and what they could not be required to do.

The Select Committee, in considering the question, had received great assistance from the local officers in communication with whom the Bill had been drawn up. In considering the duties which the ghatwals should be called upon to perform, the Committee had kept as closely as possible to the duties exacted from village chowkeedars. It was not, however, possible to adopt the whole of the Chowkeedaree Act, as the circumstances of the ghatwals differed in many essential particulars from the circumstances of chowkeedars. It often happened that there were ten or twelve ghatwals in one village, of whom only one would be required to act as a chowkeedar. In such cases the Bill authorized the Magistrate to employ the surplus ghatwals on patrol duties; but in doing so, the Committee provided that a ghatwal should not be required to patrol at a greater distance than five miles from the village to which he belonged, and he could only be required to act as a patrol for three months in the year; after that he would be his own master for the remainder of the year. The Committee had made the duties of ghatwals as light as they consistently could, and they thought that in the provision which they had made they had acted as fairly as possible to the ghatwal on the one hand and the district officers of Government on the other. The Committee had also provided for the dismissal of a ghatwal; but as he had a *quasi*-hereditary interest in the land which formed his service tenure, it was provided that no ghatwal should be dismissed, except after three convictions, within the space of two years, for disobedience to orders, wilful misconduct, or neglect of duty, or except after being sentenced to rigorous imprisonment under the provisions of the Penal Code, or of any local or special law. As a further safeguard, it was provided that a ghatwal who had been dismissed should have a right of appeal to the Commissioner of the Division.

The Bill as settled by the Select Committee had the entire approval of the local officers, except with regard to section 4. That section, as it stood, was objected to both by the Commissioner and the Magistrate; and as MR. BELL only received the Commissioner's letter yesterday, he had not had time to frame an amend-

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ment to meet the objection which was raised, but he hoped to do so at the next meeting of the Council.

There was only one other point to which he wished to refer. The Committee had received a petition from Messrs. Erskine & Co. and Messrs. Gisborne & Co., who were large landed proprietors in one part of the district of Bankoora. They objected to the Bill for two or three reasons. First, they complained that they had very great difficulty in collecting their rents from the ghatwals. He should have observed that it was only in a portion of the district of Bankoora that the quit-rent was paid to the Government. In the locality in which Messrs. Erskine's estates were situated the quit-rent was paid to the zemindar, and these gentlemen complained that they had very great difficulty in getting the ghatwals to pay their rent. It was suggested to Messrs. Erskine & Co. and to Messrs. Gisborne & Co. that in all probability the Government would be prepared to make the same arrangement with them as had been made with the Rajah of Bissenpore in 1806; that was to say, that the Magistrate should take the trouble of collecting the quit-rent and credit the amount of such quit-rent in the zemindar's account. To this suggestion, however, the zemindars did not seem disposed to accede, and the Committee had therefore provided that if the ghatwal persistently refused to pay rent to the zemindar, it should be optional with the Magistrate, if he thought proper, to dismiss the ghatwal from his appointment. So far the Committee had attempted to meet the just wishes of the zemindars. They had given to the zemindars in collecting their quit-rent a remedy very similar to what the Government enjoyed in the collection of their quit-rents.

Then there was another point to which the petitioners alluded. They called in question the arrangement which was made with the Rajah of Bissenpore at the commencement of this century. They said that as the Government at the time took upon themselves the control of the ghatwals, they ought to guarantee the payment of the quit-rent, or restore to the zemindar the power of dismissing and appointing the ghatwal. Mr. Bell did not think that this was a question which the Council would entertain. The Select Committee had framed their Bill upon the existing practice—a practice which had been in force for very many years. The Magistrate had at present the exclusive right of dismissing a ghatwal, and this right they had continued to the Magistrate; it was a right which he already possessed, and which the Committee considered ought to be maintained.

There was another point in the petition with reference to which Mr. Bell wished to make one or two remarks. The zemindars complained that the ghatwal's tenure had been made hereditary; they said it was not hereditary. But in point of fact the Committee had left the question of the tenure being hereditary or not hereditary, as far as the zemindar was concerned, entirely untouched. The provisions in this respect merely related to the Government on the one side and the ghatwal on the other. The ghatwal had been granted, as against Government, a hereditary tenure under certain circumstances, and the Committee had not attempted to interfere with any rights which the zemindar might possess. The zemindars complained that their reversionary rights had been altogether ignored, but in fact the Committee

had not touched these reversionary rights, because they were not in question in the present Bill. Hon'ble members were perhaps aware that these tenures had been a fruitful source of litigation between the ghatwals and the zemindars in every district in Bengal in which they existed. The zemindars maintained that they had a right to resume these tenures on the necessity for the service ceasing; but the Privy Council had held that the cessation of the service gave the zemindar no right to resume the tenure. These questions were, however, quite beside the Bill, and the Committee had not touched upon them.

He did not think there was any further remark which it was necessary for him to make, but he wished to correct a statement which he had made when he introduced the Bill. He then stated that Mr. Macaulay, to whose exertions they were much indebted for the very valuable information which he had laid before them, had expressed an opinion that it was perfectly useless to attempt to turn these ghatwals to any good account. MR. BELL found that he had entirely misapprehended what Mr. Macaulay had said. Mr. Macaulay's opinion very much coincided with his own, that so long as the duties of the ghatwals were left undefined and undetermined it would be impossible to utilize them; but that, if the present Bill was passed, and the duties of the ghatwals were clearly defined, they might be made an efficient force.

In conclusion, he thought it right to express, on behalf of himself and the Select Committee, the great advantage they had derived in discussing the measure from the assistance they had received from the local officers. In a Bill of the peculiar nature of this one it was necessary that the Select Committee should proceed upon the experience of the local officers, and he hoped the Bill he now presented would answer the purpose which the local officers had in view.

The motion was agreed to.

The consideration of section 4 was postponed; the rest of the Bill was agreed to as it stood.

PROVINCIAL PUBLIC WORKS CESS.

THE HON'BLE MR. REYNOLDS said that the Bill to provide for the levy of a cess for the construction and maintenance of provincial public works had been for some days in the hands of hon'ble members, and he now begged to move that it be read in Council. The measure was little more than an application of the existing method of assessment and valuation under the Road Cess Act to the proposed new cess. The Road Cess Act of 1871 was at present in force in all the districts of Lower Bengal, with the exception of Singbhoom, the Sonthal Pergunnahs, and the Chittagong Hill Tracts, and collections had actually commenced in every district except Darjeeling and Chittagong. In Darjeeling the Act had only come into force a few months ago, and in Chittagong the number of estates was so excessive that the valuations were not yet finished; but it was expected that in both these districts the preliminary operations would be completed during the present cess year, and the work of collection commenced from October next. The three remaining districts which he had mentioned—Singbhoom, the Sonthal Pergunnahs, and the Chittagong Hill

Tracts—would no doubt escape all collections under this Bill; and it was under the consideration of Government in what way these districts might be made to contribute their proper quota to provincial revenues. But these districts were poor and were thinly inhabited, mostly by aboriginal tribes, and, under any circumstances, they could not contribute much.

The first section of the Bill provided that the Lieutenant-Governor might exempt any district or sub-division of a district, or any estate or tenure, from the operation of the Act. That had been introduced with the object of allowing the Lieutenant-Governor to exempt from contributions under this Bill such parts of districts or estates as would be liable to the irrigation rate under the Bill which was in charge of his hon'ble colleague Mr. Ravenshaw. In the remainder of the sections the Road Cess Act was almost completely followed. The only section he need call particular attention to was section 8, which provided for the realization of the cess. The realization of the road cess was regulated by section 23 of the Road Cess Act. It had been pointed out by the Board of Revenue that the mode of realization was cumbrous and inconvenient, and the Board had urged an amendment of the Act in that respect. It was therefore thought necessary to provide that every amount which might become due to Government in respect of any arrears of the public works cess should be deemed to be a demand under section 1 of Bengal Act VII of 1868, and should be recoverable as such. The definitions of the Road Cess Act had been adopted in the present Bill. But as there might be room for some ambiguity as to what might be considered provincial public works, the 11th section gave power to the Lieutenant-Governor to declare what works were to be deemed provincial public works for the purposes of the Bill.

He thought he need not detain the Council with any further remarks, and he would therefore move that the Bill be read in Council.

The Hon'ble Baboo Kristodas Pal said that there was no member of the Council who could have heard His Honor the President's statement last week without deeply feeling the responsibility of his position, or wishing to offer the Lieutenant-Governor his hearty co-operation and support in meeting the difficulties which frowned upon His Honor at the very threshold of his career as the responsible ruler of Bengal. He was well aware that whatever might be said here as to the reasons on which it had been decided to throw the burden of additional taxation on Bengal, or as to the principles of the new taxation, Bills now before this Council would not alter the decision of the Government of India; but he hoped His Honor would not deny to hon'ble members the right, which the constitution of the Council conferred on them, to examine for themselves those reasons and principles. In discussing a measure of taxation in this Council hon'ble members laboured under great disadvantages, as they had not the requisite detailed information regarding the financial operations of Government beyond what was contained in published reports, returns, and statements; but with the information thus available he ventured to offer a few remarks.

The first point to which he would crave leave to draw the attention of the Council was the part which Bengal had played in the interesting drama of

the rise and progress of the British power in the East. It was an historical fact that the Revolution which led to the planting of the British standard on the soil of Bengal was brought about by a few leaders of the nation, who, driven to despair by the oppressions and cruelties of Suraja-doula of ill fame, invited Clive to take possession of the country and to wield the sceptre. And they all knew how from the plains of Plassey the Empire had grown and extended till it now covered almost the whole Indian peninsula; how the small band of merchants became the rulers of one-fifth of the human race; how England, which about three hundred years ago stood as a suppliant before the Great Moghul for a foot space, as it were, on the plains of Bengal for trade in the East, had become the first and mightiest power in Asia. And what had been the share of Bengal in this wondrous consummation, the marvel of the civilized world, the envy of rival nations in Europe and America? The history of the rise and progress of British power in India might be divided into six great epochs—the first, from the time of Clive to that of Lord Amherst, who in 1827 proclaimed England as the Paramount Power in India; the second, from the reign of Lord William Bentinck to that of Lord Auckland, which was the era of peace, disturbed only by the disastrous campaign against Afghanistan; the third, from the reign of Lord Ellenborough to that of Lord Hardinge, which included the conquest of Sindh and the first Sihk war; the fourth, the Dalhousian era of annexation; the fifth, the Sepoy Mutiny; and the sixth, the direct government of the country by the Crown. From 1757 to 1805 occurred that keen struggle for dominion which ensued between the English, the French, and the great native powers in the country. Within this period were waged the great battles of Patna and Buxar between the English and the Emperor of Delhi and Mir Kassim, which won for the East India Company the province of Behar, the Rohilla war, the Mahratta war, the Mysore wars, and the conflict between the Nawab Vizier of Oudh and the Emperor of Delhi, in which the English supported the former. The result of this warfare was the establishment of British power on a broad and strong basis, the acquisition of Behar in 1764, of the Carnatic and other provinces in Madras in 1801, of the ceded districts in North India which now constituted the North-West Provinces from the Nawab Vizier of Oudh in 1801, and of Orissa from the Mahrattas in 1803-1804. And who was it that supplied the sinews of war during this eventful period? The earliest revenue returns he had seen did not go back further than 1792, and from the returns from the years 1792-93 to 1801 he would give to the Council the receipts and charges of the then three divisions of the Company's territories. In 1792-93 the gross revenues of Bengal were £5,512,761, of Madras £2,476,312, and of Bombay £236,555. In that year the gross charges were for Bengal £3,873,859, for Madras £2,222,878, and for Bombay £844,096. The surplus revenue of Bengal was therefore £1,638,902. He would not weary the Council by going into the figures of all these years, but take the year 1801, which was the last of the years he wished to allude to. But he might say that during these years the surplus revenue of Bengal varied from £1,439,812 to £2,157,785. In the year 1801 the gross revenue of Bengal amounted to £6,658,334, of Madras £3,540,268, and of Bombay

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£286,457. The gross charges were for Bengal £5,420,966, for Madras £4,614,387, and for Bombay £1,432,832—Bengal therefore again yielding a surplus revenue of £1,237,368. He stopped at 1801, because after that year the ceded districts of the North-West were annexed to Bengal, and the revenues of the two were mixed up. It would be seen from this statement that the revenues of Bengal in the early days of the English in India not only contributed to the acquisition of new territories, but also to the support of those which passed under English rule. As the wave of British power rolled on, the stream of Bengal revenue went along with it to feed that wave, and they had now the pleasure of seeing its fertilizing showers convert the newly acquired provinces into smiling gardens. So much for the contribution which Bengal had made from the hard-earned means of its children to the building up of the vast and glorious empire of England in the East.

To turn now to another phase of the question, how had Bengal been treated in its turn? They had the recorded testimony of by far the most distinguished Lieutenant-Governor of Bengal, Sir John Peter Grant, on this point. In a letter to the British Indian Association on the subject of the proposed tobacco tax, dated the 17th December 1861, Sir J. P. Grant wrote as follows :—

"But perhaps it is not always borne in mind that the provincial expenditure upon public works—petty district works excepted—is limited by the supreme authority, and that the allotment made to Bengal by that authority from the general revenues has always been systematically less in an excessive degree (probably it would be safe to say by at least two-thirds) than what an allotment would amount to that should be framed on the principle of a share proportionate either to the revenue, or to the population, or to the geographical extent of the Bengal provinces, or to all these together. as compared with the other provinces of India. The result of this system, continued for a long series of years, has been such, in a comparative view, as those only who have seen many different parts of India, or whose duties have made them cognizant of what has been done from imperial funds for all parts of the Empire severally, are thoroughly aware of. At this moment there is only one really good road of any considerable extent complete in all Bengal, Behar, Orissa, Chota-Nagpore, Assam, Arracan, and Cachar (which may be taken as one-third part of British India), namely, the Grand Trunk Road; and it is not too much to say that this single work would not have existed if it had not been, by geographical necessity, an inseparable part of the line through the North-Western Provinces."

Now he thought that no one would have the hardihood to question the truth of this statement, but he had still further evidence. Sir George Campbell thus spoke on this point in this Council at the time of the introduction of the Road Cess Bill in 1871 :—

"Look at the roads, court-houses, serais, jails, and many other things in other parts of India, and you see at a glance that Bengal had great needs; and whatever the cause of the difference might be, if it was to be set right at all, we must do it ourselves, or otherwise it would not be done at all."

Well, they had it on the testimony of Sir J. P. Grant that up to 1861 financial justice had not been done to Bengal. How did the matter stand since? He had compiled some figures showing Public Works Expenditure Ordinary from 1861-62 to 1872-73; he had not seen later returns of divisional expenditure of the five great provinces of the Empire—Bengal, the North-West

Provinces, the Punjab, Madras, and Bombay; he had not taken into account the smaller provinces, as they were still in a nascent condition. The total grant for Public Works Ordinary from 1861-62 to 1872-73 was for Bengal £8,691,000, while the gross revenue during those years amounted to £188,819,000; for the North-West Provinces the grant was £4,193,000, and the gross revenue £69,679,000; for the Punjab the grant was £6,791,000, and the gross revenue £40,573,000; for the Madras Presidency the grant was £8,168,000, and the gross revenue £88,509,000; for Bombay and Sindh the grant was £12,437,000, and the gross revenue £109,506,000. The proportion of expenditure to revenue was therefore in Bengal £4 11*s.* per cent., in the North-West Provinces £6 0*s.* 4*d.* per cent., in the Punjab £16 15*s.* per cent., in Madras £9 5*s.* per cent., and in Bombay £11 7*s.* per cent. The proportion per head of population was in Bengal 2*s.* 8*d.*, in the North-West Provinces 2*s.* 9*d.*, in the Punjab 4*s.* 8*d.*, in Madras 5*s.* 3*d.*, and in Bombay 15*s.* 4*d.*

It would thus be seen that though Bengal had yielded the largest amount of revenue and comprised the largest number of the population, it had had the smallest assignment from the imperial funds for the improvement of its material condition. But it might be said that perhaps justice had been done to it in the allotments for Public Works Extraordinary. He found that the total outlay on Irrigation Works to the end of the year 1875-76 was £16,454,000, of which £7,988,000 were spent in the North-West and in the Punjab, and £4,000,000 in Bengal, the remainder being spent in Madras and Bombay. The total outlay on State Railways up to the year 1779-80 was estimated at £16,780,000, and the allotment to Bengal amounted to £2,400,000. His object in laying these figures before the Council was to show that Bengal had hitherto been grossly neglected, and that though latterly the conscience of the Government of India was roused towards it, it had taken a new bound, and new taxation was to be imposed upon the people of this province to provide for the interest upon the capital outlay and the working expenses of the canals, though with their surplus revenue the Government had hitherto prosecuted works in the other provinces which had materially improved the imperial revenue and vastly enriched those provinces. Now, he would submit with all deference that if a debtor and creditor account had been kept with Bengal, showing her contributions towards the extension and consolidation of the Empire, and towards the material improvement of the other provinces, it would be manifest that Bengal, far from presenting a deficit for which new taxation was required, would have an enormous balance in its favour after meeting all legitimate local charges. But it was argued that the Empire was an aggregate, and that all the provinces should bear their legitimate burthens. He did not deny this truth, but the question was whether it was justice that from him who had always been giving much more should be taken. The Empire, he might say, resembled a vast joint undivided Hindu family. Bengal, as the eldest brother, had for years fed and nursed the younger provinces; but was it meet and just that fresh burdens should be laid upon it because it was supposed to be in a position to pay? He could not subscribe to that theory which sought to adjust taxation on incidence per head. If A could support his family with £5

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per month, and B, his neighbour, could not do so without laying out £10, was it a sound reason that A should be mulcted £5 in order to make the incidence square? The only question was whether Bengal, compared with the other provinces, after paying all her legitimate expenses, left a sufficient surplus as her tribute to the Government of India for protection and imperial administration. The figures of the year 1872-73—those of later years he had not seen in a complete form—showed how Bengal stood from this point of view. The gross revenue from Madras was £8,173,806, and the gross charges £6,020,074, leaving a surplus of £2,153,732; the gross revenue from Bombay was £9,512,498, and the gross charges £7,313,506, leaving a surplus of £2,198,992; the gross revenue derived from the North-West Provinces was £5,831,067, and the gross charges were £2,258,932, the surplus being £3,572,135; in the Punjab the gross revenue was £3,588,076, and the charges £2,129,928, leaving a surplus of £1,458,148; but in Bengal the gross revenue was £15,831,072, and the gross charges being no more than £5,756,334, an enormous surplus of £10,074,238 was left. It would thus be at once apparent that Bengal yielded the largest surplus. But it might be urged that Bengal could not justly claim the full amount of the opium and customs revenues which were derived in Bengal, and he was quite willing to make a reasonable deduction on that account. In 1872-73 Benares opium realized £2,468,024, and allowing one-fourth of the customs revenue for the share of North India, and a similar deduction being allowed for the Bombay Customs—for since the opening of the Suez Canal and the completion of the Jubbulpore line of the East Indian Railway there were now two routes for commerce into Northern India—the total deductions amounted to £2,710,000, which, being deducted from the surplus of Bengal, left a net balance of seven and one-third millions in favour of Bengal. He had, however, heard it said that it was China, and not Bengal, which paid the opium revenue; but the wine duties of England, which amounted to about twenty millions, were paid by consumers in other countries, and yet the English treasury took the credit of it. In fact, all export duties were paid by consumers in other countries, but the produce of the duties was considered revenue. Again, they had been told that the revenue was so large because the Government maintained a monopoly; but if an excise duty had been levied on opium, and the receipts had been less, the difference would have gone into the pockets of the people, and it was therefore a direct contribution by them. Further, it had been argued that Bengal was not defended in Bengal. No one denied that; but the question was whether the surplus that Bengal yielded did not cover the cost of its protection and the benefits it derived from imperial administration.

He was quite conscious that the facts and figures he had put forward would not alter the determination of the Government of India, and would not therefore affect the question before them. The fiat had gone forth that Bengal shall be taxed, and nothing would probably alter that decision. But if the facts and figures which he had taken the trouble to collect from official records, and for listening to which with so much patience he had to thank hon'ble members, satisfied His Honor that financial justice had not been done to Bengal, he felt confident that His Honor, who was not only the responsible

ruler, but also the mouthpiece of Bengal, would take them into consideration in another capacity, and plead at the bar of the Government of India for that justice to the dumb millions of this province.

He now came to the Bills before the Council. Although the Irrigation Cess Bill had not yet been introduced, the principles which had led to the inception of the two Bills were identical, and he hoped His Honor would permit him to discuss them together.

The necessity for the new measures of taxation arose from the novel distinction which the Government of India had made between public works of provincial and general utility. It was said that works of provincial utility were not works of general usefulness, and that therefore they should be charged to provincial fund, and not to the imperial fund. Now, if the question were considered calmly and dispassionately, it would be seen that the distinction drawn was more fanciful than real; in fact the Hon'ble the Financial Member of the Supreme Council was himself constrained to admit that it was difficult to observe the distinction in its integrity. Sir John Strachey divided Public Works Extraordinary into three classes, the first of which only were undertaken purely from imperial considerations. With regard to the second and third class he remarked :—

"They are in both cases works of improvement for developing the resources of the country and for meeting its necessary requirements; and in respect of them it is anticipated that, besides the indirect advantages to the country arising from their construction, they will yield within a moderate time a direct income at least equal to the interest on the capital expended on them. Some of these works, which I put into my second class, are undertaken for objects of such general utility that they may be fairly called Imperial"

Again :—

"There is, as I said before, no broad line of difference between such works as these and works of imperial utility. Imperial works confer great local benefits, and works of local utility enrich the Empire; but although the two classes of works thus run into one another, the distinction is nevertheless a real one, and it has not been sufficiently recognized."

Such being the case, he would submit that the two major considerations should merge into the minor. But there were other reasons that could be fairly urged in favour of the bias which he (BABOO KRISTODAS PAL) took. What were the primary objects of irrigation works? The first was an increase of the imperial revenue from land, and the second the development of the material resources of the country; but the arbitrary distinction now drawn by the Government of India ignored the fact that the land revenue was greatly increased by extension of cultivation with irrigation water. This subject was thus noticed in a valuable work on the advantages of irrigation in India :—

"Taking £3 per acre as the value of gross produce from canal-irrigated lands per annum, and Government share of land assessment one-sixth the value of produce, on four million acres watered by State canals, the amount will be two millions sterling per annum land assessment, which Government would not derive but for the canals."

Nevertheless the canals, although a fertile source of revenue to the Imperial Exchequer, were now declared to be works of provincial utility, and the charge upon them was made a local burden. Then again with regard to irrigation, the

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provinces of Bengal Proper and Orissa were differently situated. The natural rainfall was quite sufficient in Bengal for agricultural purposes, and drought occurred but occasionally. Here the soil and the nature of the crops required incessant moisture, and in this respect the irrigation works failed to accomplish the purpose for which they are intended. With regard to Orissa, perhaps he could not do better than quote the remarks contained in the Bengal Administration Report for 1871-72 on the subject. They were as follow:—

"The rainfall in Orissa averages about 50 to 60 inches, and it cannot possibly be expected that the people should be willing to pay such high rates for water as in countries where the rainfall is one-half or one-fourth the quantity. This too is not all: high rates are gladly paid for water supplied at seasons when there is little rain. On the other hand, the Orissa rivers have an extremely scanty flow of water at that season, and we must chiefly depend on the irrigation of the rice and other rainy season crops for a revenue from the canals. It is principally at the end of the season, in October, when rain may or may not fall, while the rivers still hold a considerable flow of water, that the benefit is felt. Probably it may turn out that a uniform supply of water, well managed by a skilful system, will give better crops than an irregular, though heavy, rain supply; but at present the people look on a water-rate merely as a sort of insurance against a possible failure of the rains, especially in failure at the end of the season; and they are very unwilling to agree to pay heavy rates till at least the failure is actually on them. If the year is a good ordinary one, and there is no special failure of the rains, they think they can do very well without irrigation."

And in fact they had found that they could do so. If they had not hitherto availed themselves of the canals constructed, it was, he believed, because they did not realize the advantages proffered. The hon'ble member in charge of the Irrigation Cess Bill remarked last week that the return of the irrigated area was Rs. 3-3 per acre more than that of the unirrigated area. He (Baboo Kristodas Pal) could not venture to contradict such an authority, but he must say that, whatever the shortcomings of his countrymen, they were astute enough to understand their own interests, and that, if they had found irrigation water so remunerative, they would not surely have been so backward in taking it. They would, he thought, be willing to pay even 50 per cent. if they could see that they would make another 50 per cent. by doing so. But he concluded that, finding that this would not be the result, they had hitherto refrained from using the water of the canals except in case of absolute necessity.

His Honor the President said he was unwilling to interrupt the hon'ble member, but it appeared to him that the tendency of the hon'ble member's remarks was with reference to the Irrigation Bill and the compulsory cess, and he would therefore suggest that these remarks should be reserved till the Irrigation Bill came before the Council.

Baboo Kristodas Pal said that, in accordance with the suggestion made by the Hon'ble the President, he would reserve his remarks on this head for the present. The principle of the Bill which was before the Council was that the whole of the provision for irrigation works and State railways in Bengal should be made by the Local Government. These public works had owed their origin to the action of the Imperial Government, but having proved financial failures, they were now made over to the Bengal Government; in fact, the

people of these provinces were called upon to make up the loss which the Government of India had sustained by its own inconsiderateness. He admitted that they had been undertaken by the Government of India with the best of motives, but there had been a sad want of information and foresight on the subject. There could be no doubt that, if the Government had not purchased some of these works at exceedingly high prices, they would have been perhaps sold for a mere song; for their prospects were never very cheering, and no one would have paid the high price for them that the Government did. Now, in order to meet current interest and working charges of these undertakings, it was proposed to double the road cess, which, when it was first imposed, was intended to be confined to local purposes only. He could not understand why the "land" alone had been singled out for taxation, when these works, if they were to be regarded as an insurance against future famines, would in that sense be beneficial to the whole community, though he doubted that, when water could not be had in sufficient quantities when most needed, they could justly be regarded as an insurance against drought. On the other hand, if the general wealth of the nation was developed by means of irrigation canals and railways, the whole country would be benefitted. But because the road cess was a simple method—and he was quite willing to admit that as a means of drawing direct taxation, the plan of the road cess was by far the easiest, cheapest, and least troublesome—that was no reason that the land should bear the whole burthen. It should be remembered that when the road cess was first proposed, it was regarded as an inroad on the Permanent Settlement. Nor was it unjustly so regarded. When the Permanent Settlement was made Lord Cornwallis wrote to the Court of Directors:—

"If at any future period the public exigencies should require an addition to your resources, you must look for it in the increase of the general wealth and commerce of the country, and not in the augmentation of the tax upon the land."

And here he would, with the permission of the Council, make a digression, and submit a statement showing the produce of indirect taxes in the five great Provinces of the Empire.

Thus the North-Western Provinces yielded in salt £476,608, excise £203,391, stamps £351,328, customs, after taking due credit from Bengal and Bombay, £245,372—total £1,276,699. Similarly, the Punjab yielded in salt £541,253, excise £97,129, stamps £239,242, customs £294,851—total £1,471,475. Madras, salt £1,331,183, excise £602,767, stamps £484,246, customs £315,468—total £2,753,664. Bombay, salt £796,244, excise £377,939, stamps £458,385, customs, less deduction for Northern India at one-fourth, £547,140—total £2,179,758. Bengal, salt £2,648,361, excise £698,817, stamps £935,108, customs, less deduction for the share of Northern India at one-fourth, £810,031—total £5,002,317.

It would be thus seen that the four principal branches of indirect taxation were most productive in Bengal, fully justifying the expectation of the far-seeing statesman who gave this Magna Charta to the agricultural population of Bengal.

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Some erroneous notions seemed to exist as to the character of the Permanent Settlement, and he could not therefore do better than give the judicial construction of it in the words of Messrs. Tucker, Barlow, and Hawkins, Judges of the Sudder Dewanny Adawlut in 1848. They said:—

"It is a narrow and contracted view to suppose that the Permanent Settlement consists in nothing more than the obligation on the part of the zemindar to pay a certain amount of revenue annually to the Government. The settlement is a compact by which the zemindar engages on his part to pay a fixed amount of revenue to the State; and the State on its part guarantees to the zemindar, by means of its judicial and fiscal administration, the integrity of the assets from which that revenue is derived, and which in fact constitutes the Government's own security for the realization of the revenue."

He would not trouble the Council with what that eminent lawyer Sir Barnes Peacock wrote on the subject when he was asked to draft a Bill for the levy of a Rural Police Cess on land in Bengal. On perusal of Sir Barnes Peacock's Minute, Lord Dalhousie wrote as follows:—

"I have studied with deep attention the valuable Minute which has been recorded by our honorable and learned colleague Mr. Peacock relative to the legal or equitable right of the Government of India to levy a further assessment on the holders of land in these Lower Provinces for the payment of a police force. The draft Act on which Mr Peacock comments was transmitted by myself from the Government of Bengal. I am therefore the more bound to say that the clear reasoning by which he has supported his opinion, adverse to the levy of the proposed rates on the holders of lands, has fully convinced me that this Act should not be extended to rural villages. I therefore assent on my own part that the word 'village' should be omitted from the draft Act."

That opinion was subscribed to by the other Members of Council—the Hon'ble Mr. Dorin, the Hon'ble General Low, and the Hon'ble Mr. Halliday. The Indian Educational Blue-Book, which was published a few years ago by order of the House of Commons, also contained a number of opinions of the most distinguished Indian officials on the subject of the Permanent Settlement, in which it was broadly stated that the imposition of the road cess would be a breach of the settlement. The Indian Council was divided on the subject, and it was a vote which carried the despatch of the Secretary of State sanctioning the imposition of the present road cess. Such eminent Indian statesmen as Sir Erskine Perry, Sir Frederick Halliday, Sir Frederick Currie, Mr. H. T. Prinsep, Mr. R. D. Mangles, and Sir Henry Montgomery opposed the cess on the ground that it involved a direct infringement of the Permanent Settlement. But if the road cess was a violation of the pledge given, how much more so was the proposed cess embodied in the Bill now under consideration? There could in fact be no comparison between the two. The Secretary of State hedged in the road cess with the following conditions:—

"It would indeed be most desirable if the local character of these rates could be emphatically marked by committing both the assessing of them and the application of them to local bodies" * * * *, and if possible to carry the people along with us through their natural native leaders, both in the assessment and in the expenditure of local rates.

"It is, above all things, requisite that the benefits to be derived from the rates should be brought home to their doors,—that these benefits should be palpable, direct, immediate."

That was the opinion of the Secretary of State. And Sir George Campbell, when the Bill was before the Council, spoke of it in the following terms:—

"The object and intention of this Bill was to make a beginning of self-government by introducing a mode of local self-taxation, and leaving the administration of the funds received from local taxation to the people of the locality for whose benefit and improvement the taxes are imposed."

And again:—

"The object, the principle, the very essence of this Bill was simply this, that we sought to obtain from the people of Bengal permission to enable us to tax them for their own benefit, not for the general purposes of Government, but for the local benefit of a particular locality; and we wish to make the form and mode of taxation as local as we can."

The object of the cess was thus made distinct both as to place and time, and it was not then contemplated to increase it. In fact, when Mr. Wordie anticipated the future by expressing an apprehension of increase of taxation by this easy method, Sir George Campbell remarked that there was no reason for such an apprehension, saying that "he did not know whether any additional cess would ever be imposed." But the present Bill proposed the doubling of the road cess for provincial works, which would necessarily be confined to the class interested in land. That such class taxation was opposed to all sound principles of taxation and justice would be seen from the opinion recorded by one of the most eminent economists produced by England, John Stuart Mill. Writing on the subject of a tax on rents, he said:—

"A tax on rents falls wholly on the landlord. There are no means by which he can shift the burthen upon anyone else. It does not affect the value or price of agricultural produce, for this is determined by the cost of production in the most unfavourable circumstances, and in those circumstances, as we have so often demonstrated, no rent is paid. A tax on rent therefore has no effect other than its obvious one: it merely takes so much from the landlord and transfers it to the State."

And again:—

"A peculiar tax on the income of any class, not balanced by taxes on other classes, is a violation of justice, and amounts to a partial confiscation."

The question therefore which the Council had to consider was whether or not this partial confiscation was not involved in the proposed scheme of taxation—that was to say, whether the Bill was or was not open to the reproach of John Stuart Mill.

Now, it might be said that the Government was obliged to have recourse to extra taxation on account of the burdens thrown upon it. But was there no other means at hand for obtaining revenue? If the salt tax were raised 8 annas a maund, the yield would be more than forty lakhs, while the pressure would be little more than one anna per head. But by doubling the road cess, which was at the maximum figure of two pice in the rupee, the sum to be realised was, he believed, estimated at 33 lakhs, of which 20 lakhs might be said to be the share of the ryots and small tenure-holders, if the cess were levied at the maximum sum in all districts. He did not know the exact number of cess-payers who were ryots or small tenure-holders; but taking the estimates of the census report of the agricultural population at 2½ millions, the pressure per

head was about 13 annas; and giving four souls to each family, the pressure per head of each agricultural family came to three annas one pie, or over 300 per cent. of the proposed addition to the salt tax.

The salt tax was one which many authorities in Bengal were of opinion should be regarded as a provincial reserve in cases of urgent necessity. Six years ago, during the discussions on the Road Cess Bill, the Hon'ble Mr. Schalch said:—

"If it should be necessary to have recourse to provincial taxation, he believed that an increase in the salt duty only would prove the most suitable for that purpose, and therefore it must be held in reserve."

His Honor the present Lieutenant-Governor was also strongly in favour of an increase to the salt tax in lieu of the road cess, and perhaps he could not do better than read to the Council some extracts from a speech made by His Honor in this Council six years ago:—

"The Hon'ble Ashley Eden said he did not propose to follow His Honor the President on the question of local taxation, but only desired to express his general concurrence in the views that had been expressed. But as allusion had been made to those who were strongly in favour of an increased salt duty in lieu of direct taxation, and as he had taken an active part in supporting that view, he thought that he might be permitted to give his reasons for the notions which he entertained on the subject. He should like to state his reasons for not considering the arguments that had been adduced by the Hon'ble the President against an increase of the salt duty as altogether conclusive.

"First, it was said that salt was an article of imperial revenue, which we were therefore unable to tax. No doubt if the Council was to sit down and propose to pass a law for raising the duty on salt, this objection would be absolutely unanswerable; and obviously, if the Government of India would not consent to our raising funds for Provincial Services by an increase of the salt duty, there was an end to the matter.

"But what he desired to urge, and what those who thought with him desired to urge, was that if it could be conclusively shown that the salt tax was the best mode of raising the necessary increase to taxation for provincial purposes, and the mode was in accordance with the wishes of the people who had to be taxed, it would be open to the Local Government to ask the Government of India to agree to the imposition of a small addition to the existing duty on salt for local purposes. Every one fully admitted that this Council could not impose a tax on salt: all that it was desired to urge was that the Government of India, in lieu of pressing us to raise local cesses of an irritating and wasteful character, might themselves do all that was necessary by this indirect form of taxation, to which nobody raised any sort of objection, and, in fact, which nobody knew that they were paying * * *

"The price of the salt commonly used by the lower classes was less than two annas per seer, and had continued at that rate for a long time; yet the first investigation into the subject of a salt tax in the early days of our rule in India showed that two annas was the retail rate: so that practically at the first levy of this duty the tax had been just as much felt by the consumer as now, and more so; for although the price of every other article of consumption had largely increased, although the price of labour and the rate of wages had much increased, though the value of money had decreased, the price of salt remained what it was when we first came into this country. * * * *

"Next it was said that salt could not bear an additional tax. It appeared to him that when we came to consider that each person consumed on an average six seers of salt per annum at the outside, and that a small increase of duty, say four annas or eight annas per maund, would yield more than all the local taxes put together, it was quite clear that not a single person in the country would know that he was paying any additional tax at all.

What was four annas or eight annas per maund to the agricultural labourer, who only eat the seventh part of a maund in the year, compared to a cess on land, or a house tax? Even those who knew that the salt which they consumed had been subjected to the payment of a duty did not know how the tax was paid or collected.

"Then it was said that an increase of the salt tax would have the effect of shifting the burden from the rich and putting it upon the poor. But he thought that such an argument would hardly bear examination; it was one which had often been used and as often refuted. For although probably the poor man consumed as much salt as the rich man, yet if we took into consideration the peculiar relations of the rich with the poor—if we consider the number of retainers that the richer classes of the natives had always about them—it would be found that the apparent inequality did not in fact exist; for every native was accustomed to feed his retainers, and they therefore not only paid the tax themselves, but for all their retainers as well. Where a poor man paid a single rate, the rich man paid 10, 20, 30, or 50 rates, as the case might be Anyway, if the tax was heavy on the poor man, he would not be slow to shift it, by the increased price of labour, to the rich."

Nothing could be more clear, more cogent, and more convincing than the arguments of His Honor in favour of a slight addition to the salt tax as a substitute of direct taxation; and what His Honor said six years ago would hold equally good now. He need not repeat the opinion so often expressed that direct taxation was utterly unsuited to the habits, feelings, and character of the people of this country. The only argument that he had heard in favour of the new system of local finance was that it gave more freedom to the Local Governments. He was free to confess that that was a consummation most devoutly to be wished for; but the cost at which that freedom had been purchased was very great, and the principles on which the system of localization of the charges referred to was based were contrary to justice, reason, and right. He was personally as warm an advocate of home rule as ever existed, but he prized justice above all things; and when he saw that the freedom of the Local Government was to be bought at the sacrifice of the plighted faith of the State, and at the risk of partial confiscation of one class of profits, as John Stuart Mill called it, he could not help saying that it was too dear a price.

He had done. He thanked the hon'ble members for the courtesy and attention with which they had listened to him. He felt that he should not be doing his duty if he did not mention that there was a considerable feeling among the native community on the subject of the proposed taxation. He hoped it would not be understood that they wished to evade their legitimate burdens. They were deeply grateful to the British Government for the manifold blessings they had received from it, and they yielded to none in loyal devotion to make the necessary sacrifice for the well-being of the commonwealth. But they wanted justice. And they had this consolation that they had at the present moment one at the head of the Local Government who knew the people, and whom the people knew, who warmly sympathised with them, and to whom they were deeply attached, for whose sake they were prepared to make any reasonable sacrifice, and who, they felt confident, would do nothing which might involve wrong and injustice to them.

His Honor the President said, he did not gather from what had passed that the hon'ble member desired to oppose the motion which was before the Council, which was that the Bill be read in Council. But he understood the

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hon'ble member's object to be to assent to the Bill as a necessity, and at the same time to take that opportunity of explaining his reasons for thinking that, from the first connection of the British Government with this country up to the present moment, Bengal had been treated with great injustice in financial matters. He would not attempt to follow the hon'ble member through that interesting and able sketch of the past financial history of Bengal which he had given the Council, neither had he the materials before him to enable him to do so even if he wished it, or thought it could answer any good purpose. It might be that every argument he had used was perfectly just, and that even the figures he had quoted had been accurately sifted and analysed, and were correct. But that was not the question with which they had now to deal. If it was open to His Honor to propose a readjustment of the accounts as compared with the other provinces of India since 1790, he should be glad to give his support to the proposal, and appropriate for provincial purposes the large balance which his hon'ble friend promised as the result of such an investigation. But it was quite obvious that nothing of the kind was possible, or could in any way be carried out. And even if a discussion upon the various points which the hon'ble gentleman had raised were possible, it was quite certain that it would be found that in respect to each of his arguments there would be some one who would find something very cogent to say on the other side; so that any adjustment now of the vexed questions of finance for nearly a century would not be likely to end in any very definite conclusions. There was no argument which had not two sides to it, and if Bengal was to be heard as to the past, other provinces would also have their say. Take as an instance the first argument which had been used—namely, that the people of Bengal first invited the British Government to take up their abode in this country and establish their rule there, and contributed to the building up of the Empire, and had ever since contributed to its maintenance and to the acquisition of other territories beyond, and that this constituted a reason why Bengal should be treated with great forbearance in the matter of taxation. But it was quite possible that the other provinces which had been annexed and included within British India subsequent to the first establishment in Bengal might argue that the whole of the taxation should be borne by Bengal, because the British Government was brought here without consulting them, and Bengal had provided the means for maintaining and extending the British Empire in India. In the same way something might be said per contra to all the claims which the hon'ble gentleman had made on behalf of Bengal. But it would answer no good purpose now to go over the various points that had been raised as to the past, for the only point left open to them to discuss was what they had to do. Now they had got a burden thrown upon them, and they had to consider the best means of meeting that burden. Was it best met by the proposals which he had made to the Council, or had any hon'ble member any better suggestion to make on the subject? His hon'ble friend had quoted a very able argument of his friend Sir John Grant, and of Sir George Campbell, as opposed to the principle of the Bill now before the Council. Sir John Grant pointed out that nothing had been done for Bengal in the way of assigning it funds for opening out communications

up to 1861; and Sir George Campbell had said that very little had been done since, which was no doubt true. But it appeared to His Honor that, if the hon'ble member had been arguing in favour of this Bill, he could not have adduced any stronger argument than that of those two gentlemen, because they wanted to show that whatever was raised in Bengal was spent elsewhere, and that Bengal did not receive its fair share of its own revenues. The object of the present system of decentralization was to put a stop to that state of things, and to secure to Bengal a certain amount of the revenue which it had to raise for itself. In nearly every native newspaper which he had taken up lately he had seen Bengal spoken of as the milch cow of India. The object of this measure was to remedy this state of things which had led to the common use of this phrase, to enable Bengal to use a little of its own milk, which it now contributed for the benefit of other provinces, and to substitute for fresh general taxation, of which they could have no account and from which they should receive but little benefit, a system under which they were to impose their own taxation and look after the development and expenditure of their own finances. But in order that this might be effected the Government of India naturally asked to be relieved of the cost of constructing local works, which that Government could not have met at the present time without imposing some form or other of taxation. The question was whether they should have local taxation and local administration of the funds thus raised, or imperial taxation and imperial administration of the new revenues to be raised. There was no question of local taxation or no taxation at all. He thought that the principle now introduced was a very sound one; he looked forward to the measure now inaugurated as one of the first steps towards the progress and prosperity of the country, although he fully admitted that the means they had to devise to attain to that first step were exceedingly painful and harassing.

In making his comparison between the different provinces, his hon'ble friend had carefully avoided one form of comparison—that was the relative rate per head of population of the incidence of taxation in the various parts of the country. Looking at the question in this way, he would find that the people of Bengal bore a percentage of taxation very light in comparison with many other provinces of India. His Honor was aware that his hon'ble friend had given his reasons for not having done so; but they did not seem to him to be conclusive, as the real question at issue was whether the people of Bengal bore a heavier burden than the people of the rest of the country, and whether they were so overwhelmed with taxation that they were unable to give any further assistance to the Government. His hon'ble friend had said that it was now proposed to make the people of Bengal pay for railways and irrigation works which were constructed as a venture which had now turned out to be a loss, and were not remunerative. His Honor himself only knew of one railway in Bengal which was taken up as a venture, and which had proved a great financial failure, and that was the Mutlah Railway. Well, that railway had been made over to Bengal without a single penny of charge; it had been given to them without any charge as regards capital, though the value of the gift even then was perhaps doubtful. As regards the other railways, although they had

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to meet the interest on the capital as a first charge, there was not one of them which, in the course of two or three years, would not pay the interest upon the capital expended upon them, and some of them would almost immediately do so. But they had also to provide capital to extend the system of railways. He thought there was nothing which could possibly be done for Bengal that would tend so much to the development of the wealth and trade of the province and the good of its people as these cheap lines of railway, giving distant and isolated places of production ready access to the large markets. It was a point upon which he had never heard any difference of opinion among those who had opportunities of seeing the material benefits conferred upon the people by the facilities which this means of inter-communication afforded.

Then his hon'ble friend had said that nobody in his senses would have paid the Orissa Irrigation Company the price which the Government had given for their works, and that consequently it would have eventually come into the market for absolutely nothing, and the company would have been glad to accept any price that they could have obtained. That might have been true if the Government had not guaranteed the interest upon the capital; but as long as Government guaranteed the interest upon the capital, there would always have been somebody ready to purchase it. Obviously it was the best for the Government to take it over and try to get something from it, rather than to go on paying interest without receiving anything in return. Whether they paid too much for the business or not was another question.

The hon'ble gentleman had quoted some remarks of the Secretary of State as bearing upon the principle of the Bill now before the Council. But those remarks referred to the imposition of local cesses for local purposes, and had nothing whatever to do with the question now before the Council. In speaking of a measure for making local works chargeable upon local rates, it was no doubt perfectly correct to say that the works should be such works that the people should immediately and locally benefit from them, and that they should have a voice in the management of the fund which was raised from such taxation. But the proposal now under consideration was a different thing; it was a measure for raising a further sum of money for the general development of works for the benefit of the whole of these provinces, and therefore nothing which the Secretary of State had said on the subject of purely local works would have any application to the present question.

He was sorry that his hon'ble friend had raised again the question of the breach of the permanent settlement, because, although no doubt it was a question upon which there was a great conflict of authority and difference of opinion, he thought it was a matter the principle of which had been decided at the time when it was determined, with the approval of the Local Government, and also the approval of the Supreme Government and of Parliament, to levy a system of local cesses for local improvements. Whatever had to be said on the subject had been said then, and it had now been finally and definitely set at rest, and he was certainly not disposed to re-open it.

As regards what had been said as to the pledge which had been given by Sir George Campbell that there would be no further local taxation, His Honor

thought that it was clear enough from the very words quoted by the hon'ble gentleman that, so far from any such pledge having been given, Sir George Campbell had simply said that "he did not know whether there would be any further taxation or not," and that certainly was not any pledge as to his own intentions, and certainly no pledge as to the intentions of succeeding Governments.

Finally, he must say something about his own remarks upon the salt duty, made some years ago, which had been quoted against him by his hon'ble friend. He was quite prepared to say now every word that he had then said. He repeated the belief to which he had given expression on the occasion to which his hon'ble friend referred that there was no tax which would be felt as little, and which was so easy of imposition and in every way so desirable, as the salt tax But it was entirely out of his power to propose such a tax to meet the present difficulty. In the first place, it was a tax which was reserved by the Government of India in its own hands, for increase or decrease, according as great pressure might fall or not upon the imperial revenues of the State. But it was not even in the power of the Government of India to increase the salt tax at present for certain practical reasons. There were three or four different systems of salt duty going on in parallel lines in Bombay, Madras, the North-Western Provinces, and Bengal. Among the many difficulties which they had to deal with in connection with this state of things was this—that while the people of Bengal, from their great prosperity, arising no doubt from their long connection with the British Government to which his hon'ble friend had alluded, were able to pay without difficulty almost any amount of salt tax, the people of Madras and Bombay, who were said to be much poorer, though he was not sure that this was the case, declared themselves unable to pay a salt tax very much less than the tax which was imposed on the people of Bengal, and the consequence of this difference had been that a most expensive and in other ways objectionable system of internal customs had been established to prevent the salt of one province going into another. The object the Government of India, he believed, had in view was to equalize as far as possible the rate of the salt duty in the different presidencies, and to do away with this objectionable inland customs line. But if they attempted to raise the salt tax in Bengal they would be increasing this difficulty, and it would be almost impossible to bring about an equalization of the salt tax in the different presidencies. He had no doubt, however, that the Government would be able in the course of time to approximately equalize the duties and do away with the customs line. But it was obviously quite impossible to think of imposing a further rate of duty on salt under such circumstances, and it was no use thinking of asking the Government of India to do so.

He did not know whether his hon'ble friend had any other scheme of taxation to suggest in place of this one which His Honor had laid before the Council. He gathered that on the whole his hon'ble friend would support it, and he was grateful to him for the terms in which he had promised his co-operation in meeting the requisition for funds which had been received from the Supreme Government. His Honor was quite aware that it was very far from being a

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perfect scheme, and that it was open to very many objections. He felt just as keenly as his hon'ble friend did that he would much rather not ask the Council to impose any new burden upon the inhabitants of this province; but having the necessity thrown upon him, and very little time left him to think about it, he was not now prepared to propose any form of taxation which was less open to objection than this scheme of a provincial cess.

The motion was then agreed to and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Reynolds, the Hon'ble Baboo Isser Chunder Mitter, the Hon'ble Baboo Kristodas Pal, and the mover, with instructions to report in two weeks.

EXTENSION OF THE LABOUR DISTRICTS' EMIGRATION ACT TO CHITTAGONG.

THE HON'BLE MR. BELL moved for leave to bring in a Bill to extend the provisions of Bengal Act VII of 1873 (the Labour Districts' Emigration Act) to the district of Chittagong and the Chittagong Hill Tracts. He said, when the Labour Districts' Emigration Act of 1873 was passed the tea interest in Chittagong was still in its infancy. At that time there was no necessity for importing labour to cultivate the few tea gardens which then existed in the district, and there was consequently no necessity to extend the provisions of the Act to the district of Chittagong. But during the last few years the tea interest in Chittagong had very largely increased. The local labour market did not now supply sufficient labourers to meet the local demand, and the planters had been compelled to indent for labourers from other districts. From returns which had been received it would appear that there were now upwards of two thousand emigrant labourers employed in the tea plantations in Chittagong. Now, when labourers were imported several serious difficulties arose. First, they were recruited in distant districts, and it often happened that coolies, after reaching their destination, complained that they had been beguiled from their homes by false representations. By extending the Labour Districts' Emigration Act to the district of Chittagong this difficulty would be got over. By that Act all contracts had to be made in the presence of a responsible Government officer, by whom they were explained to the labourers before they left Calcutta. Then there was another difficulty which had occurred in one or two cases in sending coolies to Chittagong. In one case small-pox had broken out on the journey, and in another case cholera. But the Government had at present no control over the transport; and when the coolies reached their destination, the Government had at present no means of seeing that the coolies were properly cared for. The Magistrate of Chittagong had recently inspected several tea gardens, but those who were engaged in tea plantations naturally resented the interference of the Magistrate, as the Labour Act did not apply to Chittagong.

Then there was another difficulty in regard to the labourers. After they arrived at the tea gardens it seemed to be the custom to pay them by taskwork. At present, if any dispute arose between a tea-planter and a coolie, the parties had to go to the Civil Court to have the dispute adjudicated upon. But under the Labour Districts' Emigration Act, if there was any dispute as to the quantity of

taskwork which the planter imposed on the labourer, it was decided by arbitration in the manner provided under the Act. All these difficulties had occurred in Chittagong, and it was for this reason it was thought desirable that the provisions of the Act should be extended to Chittagong.

He need hardly remind the Council that the Act had worked most successfully in Assam, Cachar, and Sylhet, and it was hoped that the same good results would follow its extension to Chittagong. It was for these reasons that MR. BELL asked for leave to introduce a Bill.

The motion was agreed to.

The Council was adjourned to Saturday, the 14th April.

Saturday, the 14th April 1877.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble H. J. REYNOLDS.
The Hon'ble T. E. RAVENSHAW.
The Hon'ble S. C. BAYLEY.
The Hon'ble H. BELL.
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR.
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR.
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR.
The Hon'ble NAWAB MEER MAHOMED ALI.
The Hon'ble H. F. BROWN.
The Hon'ble F. JENNINGS.

GHATWALI POLICE.

THE HON'BLE MR. BELL moved that the Bill for the regulation of the Ghatwali Police in the district of Bankoora be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. BELL said that when he had the honor to present the report of the Select Committee on the Bill, he stated that the Bill as settled by the Select Committee had met with the approval of the local officers, except as regards section 4. That section provided that when a ghatwal died or resigned his office the next male heir, if physically fit, was to be appointed to succeed him, provided that the heir had not been convicted of a non-bailable offence under the Criminal Procedure Code. To that section both the Magistrate of the district and the Commissioner of the division were very strongly opposed. They argued—and he thought very fairly argued—that a man might be a person of unimpeachable physique, and might not have been convicted of a non-bailable offence, but might still be a very improper person to be made a policeman, as the ghatwals

virtually were. Take, for instance, the case of a notorious budmash who had been required to furnish security for good conduct. It could not be contended that a man of that character would be a fit person to be appointed a ghatwal. But if section 4 of the Bill stood as it had been settled by the Select Committee, such a person would not only be eligible, but must be appointed to the office. It was therefore proposed that in the place of physical fitness we should substitute "personal" fitness. Up to the present time personal fitness had always been considered an essential qualification of the office, and though MR. BELL was a consenting party to the substitution of physical fitness for personal fitness, the Select Committee in making that substitution had undoubtedly introduced an innovation. Under the existing custom the heir of a deceased ghatwal always succeeded to the office, provided he was, in the opinion of the Magistrate, a competent and fit person; and in considering this question of competency and fitness, the Magistrate had invariably looked to the character of the man. He thought the Council would agree with him that in so responsible a post as that of ghatwal it was desirable to secure, if possible, the services of respectable men. He held in his hand a decision of the Nizamut Adawlut passed in 1816—a decision which was referred to in Harrington's Analysis as containing the law which regulated the status and position of the ghatwals in Bankoora, and he would read to the Council a short extract from that decision. The Judges said, with reference to the Bankoora ghatwals, that—

"Although the grant is not expressly hereditary, and the ghatwal is removeable from his office and the lands attached to it for misconduct, it is the general usage, on the death of a ghatwal who has faithfully executed the trust committed to him, to appoint his son, if competent, or some other fit person in his family, to succeed to the office."

The object of the amendment was to maintain the law and practice as it had existed since 1816. He was free to confess that it was partly due to his suggestion that the words "physical fitness" were substituted in Select Committee for "personal fitness." But as the Magistrate and Commissioner were both very strongly opposed to the change, MR. BELL thought the Council ought not to recede from what had been the law and practice from 1816 to the present time; and therefore he hoped the Council would adopt the amendment which he proposed, namely, to substitute the following for section 4 of the Bill:—

"If a hereditary ghatwal dies, or becomes physically unfit for the performance of his duties, or resigns with the approval of the Magistrate of the district, his next male heir shall be appointed in his place If the next male heir is a minor, or personally unfit, some other male member of the family, if personally fit, shall be appointed to the office, and shall, if the next male heir is a minor, hold the same until such time as the minor shall attain majority, whereupon the said minor, if personally fit, shall be appointed to the office.

"In case of disputed succession to a hereditary ghatwali tenure, the Magistrate of the district shall select the person whose claim shall appear to him to be the best, and shall appoint such person to the tenure, provided that any claimant may establish his heirship by civil suit against the person so appointed; and if he be successful in such suit, he shall if personally fit, be appointed to the ghatwali tenure in supersession of such person.

"In all other cases the appointment of ghatwals shall be at the discretion of the Magistrate of the district.

"All questions which may arise as to personal fitness shall be decided by the Magistrate of the district."

The HON'BLE BABOO KRISTODAS PAL said he thought it was an inconvenient procedure that when a Bill was agreed to unanimously in Select Committee any member of the Committee should re-open the question in Council when he had not expressed his dissent in Committee. His hon'ble friend had, however, given good reasons why he had re-opened the question, and with the permission of the Council, BABOO KRISTODAS PAL would state the reasons which led the Committee to reject the proposal now brought forward. The arguments which the hon'ble mover of the Bill had now adduced in support of the amendment had been duly laid before the Select Committee, but they thought that, when a question of a hereditary tenure was at issue, the determination of that question should not be left entirely to the discretion of the Magistrate on the score of the personal fitness of the ghatwal. Accordingly his hon'ble friend suggested the substitution of the words "physical fitness" for "personal fitness," and with a view to exclude bad characters from the scope of the Bill, the last clause was added to the section. That clause provided that no person should be appointed a ghatwal who had been convicted of an offence which is non-bailable within the meaning of Act X of 1872, the Code of Criminal Procedure.

The Select Committee thought that that clause would meet the objection of the Magistrate; but it appeared from a letter which his hon'ble friend had received from the Magistrate that he was not satisfied with that amendment. BABOO KRISTODAS PAL for one must confess that he did not see any force in the arguments which had been advanced in support of the present amendment. The question of personal fitness was so vague and indefinite that he did not think it would be fair and just to deprive a man of his hereditary tenure at the discretion of the Magistrate. If the ghatwal proved incompetent, he would be duly got rid of under the provisions of the law. But before his incompetency was proved, the Magistrate might have heard a rumour that the man was a bad character, and on mere suspicion dispense with his services and deprive him of his hereditary tenure. He did not think that in dealing with rights of this character the Council should give their sanction to the exercise of such a discretionary power. BABOO KRISTODAS PAL would therefore support the section as it stood.

The HON'BLE BABOO ISSER CHUNDER MITTER said that, as a member of the Select Committee, he thought it due to himself to state that the innovation referred to by the hon'ble mover of the Bill was made after sufficient consideration. The Select Committee had before it at the time the proposal submitted by the Magistrate, and the Committee gave it every consideration: it was on that account that the provision about conviction of a non-bailable offence within the meaning of Act X of 1872 was added. He thought that after all the consideration which had been given to the subject, the section, as it had been amended by the Select Committee, ought to stand.

The HON'BLE THE ADVOCATE-GENERAL said he considered that the amendment proposed by his hon'ble friend Mr. Bell left it so entirely in the discretion of the Magistrate to determine whether a person was unfit to be appointed a ghatwal, that it would be unsafe to vest such a power in the hands of any one person. These ghatwali tenures were hereditary, and although the ghatwals had to perform certain duties, he was sure that the local officers would agree with him in saying that they had not been of a very onerous character, and were quite inadequate to the large tracts of land which some of them had got. He would suggest that the section in the Bill should stand, with the addition after the words "Act X of 1872" in line 10 of the words "or is a man of a notoriously bad character." He would also suggest the following addition after the first clause of the section:—

"In all cases in which a hereditary ghatwal is set aside, and another person is appointed to succeed instead of the next male heir, a report shall be made to the Local Government, and the sanction of the Lieutenant-Governor shall be necessary to make such appointment valid."

He did not think it proper to leave it in the hands of the Magistrate alone to determine that a ghatwal was unfit. In legislating in this matter he would desire not to say one word against the power not being properly used, but he thought it necessary to guard against the improper rejection of ghatwals by persons comparatively junior in the service, and he would recommend the retention of the section with the amendments he had suggested.

The HON'BLE MR. BELL said he had no objection to have his hon'ble and learned friend's amendments substituted for the one he had moved, if such was the wish of the Council; but he felt it right to say that his present amendment was in strict accordance with the present practice. Since the decision of the Sudder Nizamut Adawlut in 1816 the Magistrate had invariably determined the question of a ghatwal's competency and fitness. But if the Council desired it, he had no objection to the amendment of the learned Advocate-General being substituted for his own.

It was perfectly true, as his hon'ble and learned friend had stated, that up to the present time the ghatwals had not rendered very efficient service; but it must be remembered that the object of the Bill was to make them an efficient force, and he should be sorry to see a disreputable member of the community admitted to it. On the whole, he thought the substituted amendment would meet the object in view, and he would therefore withdraw his amendment in favour of that proposed by the learned Advocate-General.

HIS HONOR THE PRESIDENT said he thought the amendment of the hon'ble and learned Advocate-General met all the difficulties of the case, and he thought it was necessary to have some power of appeal from the decision of the Magistrate even as to physical fitness. Hitherto in cases of this sort the ghatwals had resorted to the civil court for redress, and there had been a great deal of conflict between the civil courts and the executive officers; the result of the appeal which was now proposed to be given would be to take these cases out of the hands of the civil court. Therefore, having taken the matter

from the cognizance of the civil courts, we were bound to give to the ghatwals the greatest security possible, by giving an appeal to the highest executive authority in cases where, by any hasty or ill-considered order, the heir of a ghatwal might be deprived of his rights. He thought that, with the amendments now proposed, the interests of the ghatwals would be amply protected.

The Hon'ble Mr. Bell's amendment was then by leave withdrawn, and the Advocate-General's amendments were agreed to.

A clerical error in section 9 was corrected; and after a verbal amendment in section 21, the Bill was passed on the motion of the Hon'ble Mr. Bell.

EXTENSION OF THE LABOUR DISTRICTS' EMIGRATION ACT TO CHITTAGONG.

THE HON'BLE MR. BELL moved that the Bill to extend the Labour Districts' Emigration Act, 1873, to the district of Chittagong and to the Chittagong Hill Tracts be read in Council. He did not think it was necessary to trouble the Council with any further remarks, having explained the object of the Bill and the reason for its introduction at the last meeting. The provisions of Chapter III of the Act, referring to the regulation of labourers in the tea districts, were made applicable to labourers who were at present in the district of Chittagong. He did not think it was necessary that the Bill should be referred to a Select Committee. No new principle whatever was involved in the Bill; it was merely proposed to extend to Chittagong an Act which had worked most successfully in other districts.

The HON'BLE MR. BROWN said he did not know whether the hon'ble member had taken the sense of the community at Chittagong with respect to this Bill. He ventured to submit that if that had not been done, the reading of the Bill should be deferred until a reference had been made to those interested in the question at Chittagong and their opinion ascertained. He did not himself know that there was any special objection to the application of the Labour Districts' Emigration Act to Chittagong; but he thought the Council would agree with him that the amplest opportunity should be given for expressions of outside opinion on a Bill of this nature. He would therefore suggest that the reading of the Bill should be postponed for three months.

HIS HONOR THE PRESIDENT observed that possibly the best course would be that the Bill should be read in Council and referred to a Select Committee, and then further proceedings upon it might be deferred for a reasonable time.

The motion was then agreed to, and, the Hon'ble Mr. Brown having stated his inability to serve, the Bill was referred to a Select Committee consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. Jennings, and the mover.

RATE UPON IRRIGATED LANDS.

THE HON'BLE MR. RAVENSHAW said that at the meeting of the Council on the 31st March he had obtained permission to introduce a Bill to provide for irrigation in Bengal, and the Bill had now been drafted and placed in the hands of hon'ble members. In 1876 an Act, No. III of that year, had been

passed for the same purpose, but that Act was based on a principle of voluntary leasing. This system of voluntary leasing was found practically not to be satisfactory, and it was therefore considered necessary to modify the existing law. The Bill which he had now the honor to introduce followed what he believed to be a more correct system, involving as it did compulsory rates upon all lands irrigated and protected by Government works. It should be understood that canals and irrigation works were not undertaken by Government as a speculation with a view to pecuniary profit, but they had been accepted as an imperative necessity in order to save the people from periodically recurring famine and flood, as well as the best means of improving the country, increasing its resources, promoting trade, and facilitating traffic. If the necessity for irrigation and prevention from flood needed any proof, the enquiries set on foot by Government after the Orissa famine of 1866, as embodied in the Embankment Committee's Report, would show that the cost to Government of maintaining embankments during twenty-four years was 12 lakhs of rupees; the loss of revenue caused by flood during the thirty-six years previous to 1866 was 19¾ lakhs of rupees, and the loss by drought during the same period was 25¾ lakhs—thus making the total of the Government remissions 45½ lakhs. Again, in 1866 the actual loss, that was to say the value of the produce lost, was 89 lakhs of rupees, and the estimated loss of crops sustained during the thirty-six years prior to 1866 was 300 lakhs of rupees. So that no possible doubt could exist as to the desirability of Government doing its best to avert such calamity—in fact, we were gradually coming round to the opinions of that apostle of irrigation, Sir Arthur Cotton, and beginning to recognize the fact that the salvation of a large portion of India rested on the speedy completion of works providing irrigation and protection and cheap communication. It might be said that these works had hitherto effected but little good, that the people did not appreciate benefits offered to them free, and that the costly works undertaken were not utilised. All this was to a certain extent true. In this country great difficulty was experienced in getting the people to move out of the old grooves in which they were brought up, and this fact was clearly proved a few years ago when Sir George Campbell's scheme for farms was put upon its trial. In spite of the great advantages offered, such as payment of rent, free supply of water, advice and assistance of Government officers, the people refused to avail themselves of them, and so strong was the caste feeling on the subject that some of those who had agreed to accept the offers made subsequently declined to do so, pressure having been brought to bear on them by their countrymen. But experience had shown that very few, if any, of those who once executed leases for canal water ever objected to do so again, or desired to abandon its use, and this was but natural, considering the advantages they derived from its use. In Orissa only a small portion of the canal system was complete, but wherever irrigation had extended, it was clear that it had been very beneficial to the people. There had been a general improvement of the population in irrigated tracts; zemindars found no difficulty in meeting the calls for revenue, ryots paid their rents without hardship, and the value of produce was increasing. Rice, the staple, was now more than double the price

current twenty years ago, and what was a very significant fact, during the last few years, that was to say ever since irrigation works had commenced, there had been no sale of an estate for arrears of revenue throughout that part of the district where the works were in operation. Personally he was not aware of the results of irrigation in Midnapore and Behar, but he believed he would be considered qualified to express an opinion as to Orissa, and knowing as he did of the great impetus that had been given to trade and general prosperity in that province during the past seven years, he believed there could be no doubt that similar results would follow an extension of canals and irrigation in Behar and elsewhere. For such benefits it was but just and proper that the people should be made to pay. A compulsory cess on irrigable and protected land would indeed partake more of the character of an insurance than a tax, and the payment even of the maximum rate of Rs. 2 per acre on irrigable land should secure a minimum profit of Rs. 3-3 per acre in ordinary rice lands, and a considerably larger profit in two crop lands, although it was probable that it would be found inexpedient to impose the maximum rate at once. During the first year or two some labour and care in proportion of their lands for irrigation would require to be given by the people, and the duty would devolve on Government to educate the people in the use of irrigation water, so as to enable them to attain a maximum of produce. And as the Bill provided for the levy of the rate on only such lands as might be irrigable, protected, and drained, and as the canal engineers would have to certify that these conditions obtained before the rate could be levied—provision being also made for the remission of the rate whenever the supply of water might fail or Government embankments give way—he thought no reasonable objection could be offered to the Bill, considering the imperative necessity that existed for works of this description. With these remarks he would move that the Bill to provide for irrigation in the provinces subject to the Lieutenant-Governor of Bengal be read in Council.

The Hon'ble Baboo Kristodas Pal said that, reading this Bill in the light of the opinions recorded by such eminent authorities as Sir George Campbell and His Grace the Duke of Argyll, when a similar proposition was mooted about six or seven years ago, he must say, with all deference to the hon'ble mover of the Bill, that it was a measure in which principle was sacrificed to expediency and justice to convenience. The Bill surrendered the free trade principle on which the supply of irrigation water had hitherto been provided, and substituted coercion. It told the proprietor who owned the land and the peasant who tilled it, "whether you take the water or not you must pay for it. The work is there; it has been intended for your benefit; the expenses have been incurred; you may not have the intelligence to appreciate it; but money must be had, and you must therefore pay." It was, however, forgotten that when the works had been undertaken the people had not been consulted. The primary object of the projectors was commercial profit, which the hon'ble mover of the Bill seemed to ignore, though the Government, from motives of benevolence or philanthropy, had guaranteed the interest on the capital. The schemes having proved financial failures, it was now sought to recoup the loss by imposing a compulsory irrigation cess upon the people of the districts

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through which the canals ran. Surely it could not be reasonable or just to tax them on the pretext that the works had been intended for their benefit. This was not his individual opinion. The Hon'ble Council would doubtless attach much greater weight to the opinions of such an experienced administrator and such an eminent statesman as Sir George Campbell and His Grace the Duke of Argyll, than to those of any private individual like himself. Sir George had carefully studied the irrigation question, and, after making the fullest enquiry on the subject, he wrote as follows:—

"In the face of all these difficulties, notwithstanding my strong objections to a compulsory system, I was attracted by the somewhat tempting bait held out in the Punjab Canal Bill, where the compulsory rate is limited to Re. 1 per acre—a rate which, in a dry country like the Punjab, seemed very cheap for cold-weather crops, if the provision is *bonâ fide* carried out that an independent authority is to decide if the land really needs water and has an ample supply of it. It would be much more difficult to determine what really needs irrigation in the rainy season in Orissa: all lands do not want it there, and while one year it is beneficial, another year it is not needed. If once we depart from the straight path of voluntary contract, we do not know what we may come to."

It would appear that the hon'ble mover of the Bill, as Commissioner of the Orissa Division, had advocated the imposition of a compulsory irrigation rate, and Sir George Campbell replied as follows:—

"I must guard myself against any supposition that I can for a moment concur in the doctrine that it is fair to charge the interest of capital expended on the locality for whose benefit it was intended, that people who have no voice in the matter should be made to pay for engineering or financial failures, not because they are benefited, but because the projectors intended to benefit them."

Yet it was now proposed to impose a compulsory irrigation rate for reasons which Sir George Campbell had held were conclusive against it. It would be in the recollection of the Hon'ble Council that in 1869 the Punjab Canal Bill was passed by His Excellency the Viceroy's Council sanctioning a compulsory irrigation rate; the Bill was in due course forwarded to the Secretary of State, who vetoed it in the following terms:—

"The object of the provision in question is to enable Government to secure itself against pecuniary loss in the event of a canal proving a financial failure. Such failure might ensue from three causes—a canal might not be able to supply for irrigational purposes the expected quantity of water; or, the expected quantity being available, cultivators might decline to avail themselves to the expected extent; or excessive costliness of construction might, in order to render a canal remunerative, necessitate the imposition of higher rates than cultivators could afford or would voluntarily pay. In the first case, under the proposed enactment the loss consequent on Government having engaged in an unsuccessful speculation would fall, not upon itself, but upon the cultivators whom it had disappointed. In the second, cultivators would be forced to pay for water for which they had no use, or at any rate, were not disposed to use, possibly no doubt from imperfect appreciation of the value of irrigation, but quite possibly also from a perfectly intelligible desire to have part of their land under dry crops instead of all under wet. With regard to the third, none can require less than your Government to be reminded how prone to become excessive guaranteed expenditure always is, and under the provisions of the Bill all expenditure on Government canals would be guaranteed. It will therefore be satisfactory to me to learn that the section to which exception has been taken can be so far modified as to obviate any objections."

BABOO KRISTODAS PAL had nothing to add to the objections so pithily described by His Grace the Duke of Argyll. The argument against the compulsory irrigation rate in the Punjab, he submitted, applied with equal force to a compulsory irrigation cess in Bengal.

The hon'ble member in charge of the Bill informed the Council that in Orissa during the thirty-six years preceding 1866 the State had been subjected to a loss of no less than 45 lakhs of rupees in the cost of maintaining embankments and remission of revenue in consequence of flood and drought. Now BABOO KRISTODAS PAL held that this fact was more an argument against than in favour of a compulsory irrigation cess. It should be remembered that in Orissa the State occupied the position of landlord, and that, if a private landlord had certain obligations to discharge for the protection and welfare of the tenantry, the State landlord had also similar obligations to perform; that if it was the duty of a private landlord to construct and maintain embankments, it was the duty of the State landlord to do likewise; that if it devolved upon a private landlord to grant remission of rent in calamitous seasons, it also devolved upon the State landlord to grant similar relief under like circumstances; and that if the irrigation works had saved the State this recurring loss, it ought to bear the cost of those works which were so remunerative to it. The hon'ble mover had said that the irrigation works in Orissa had a firm hold upon the people; that the ryot who once took the irrigation water would not let it go; that there was no retrogression, but progression. If such was the case, then why impose a compulsory rate? But BABOO KRISTODAS PAL was sorry to perceive from the Minutes of Sir George Campbell that the irrigation works in Orissa did not come into popular favour so smoothly and easily as the hon'ble member supposed. Referring to the proceedings of Mr. Kirkwood, who was then the Superintendent of the Orissa Canals, Sir George remarked:—

"It now turns out that his statements, showing the successful progress of irrigation, were in a sense fictitious, that is to say, by far the greater portion of his figures represented not irrigation which the people had agreed to take and pay for, but the area which, in the exercise of a despotic power, he imagined that he would call on them to pay for. The system was supposed to be entirely one of voluntary agreement, but the *bonâ fide* agreements covered but an insignificant area. For the greater part he had no agreements at all; some agreements were for large areas with persons who were not properly qualified to make them, and which fell to the ground; and where he had agreements, it was for no definite area, but for areas to be afterwards measured and ascertained"

This was the way the people were 'educated' to receive the irrigation water. Now, the strongest argument in favour of a compulsory irrigation rate was that the canals were an insurance against drought. But could this insurance be relied upon? Could this insurance be considered sure? Unfortunately the supply might fail when most needed. BABOO KRISTODAS PAL at the last sitting of the Council quoted Sir George Campbell as to the inadequacy of the Orissa Canals in this respect. He would now quote the same high authority about the Midnapore Canals. Sir George remarked:—

"There was a really extensive demand for the water, the rules were considerably relaxed, and it was believed that the day of triumph had come. But unhappily all these

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prospects were darkened by a circumstance which the projectors of the canal do not appear to have taken into account, though it seems obvious enough; the supply of water in the river which feeds the canals failed in October and November, just when water was most wanted. Short rivers rising on the surface of dry uplands must fail when the rivers fail. Though there was by no means so excessive a drought in Midnapore as in the rest of Bengal and Behar, the supply to the canal fell to 300 feet per second at the time when water was most necessary to the crops. This quantity will not suffice for much more than about 30,000 acres; so much was irrigated, but many applicants were sent away without water, and even to some of those to whom we had engaged to give it a very short supply was available. It seems, then, that we cannot safely engage to irrigate very much more than 30,000 acres without the fear that we shall fail to do what we have undertaken to do in every dry season when the rains cease early. It is seldom that the water is an absolute necessity at any other time, and the serious question arises whether we can undertake to extend our irrigation subject to this risk, and how we are to distribute the supply when we have not enough for all."

Perhaps the prospects of the Soane Canal were more promising than those of any other. On this subject the hon'ble member (Mr. S. C. Bayley) who lately presided over the Patna Division with so much ability and success would be able to enlighten the Council; but even as regards this canal, two experienced European zemindars and indigo-planters of Shahabad, Messrs. Thomson and Mylne, he saw in a public print, were of opinion that "the experience which the cultivators here (Shahabad) have so far had of the canal has not been such as to inspire them with any confidence that it will ensure them the supply of water for a given crop and at a time when it is really needed."

It would be thus seen that if the compulsory irrigation rate was justified on the ground that the canals were an insurance against drought, that prospect, according to the testimony of experienced officials and non-officials, was doubtful. On the other hand, the ryots would be compelled to pay a uniform rate in good years as well as bad years, both when there would be an abundant rainfall, when they would not require the canal water, and when there would be drought, when they would most urgently require it, but might not get it in sufficient quantities. Then the benefit of irrigation was not equal; some cultivators might profit, others might lose; but all would have to pay the same rate. That land suffered from the too close contiguity of the works was well known. He had received a letter from a zemindar of Hooghly, Baboo Lalitmohan Singh, who owned some villages near the Ulubaria Canal. This gentleman complained that his ryots in thirteen villages which he had named could not get any crop owing to the overflow of the canal and obstruction to drainage. He would read the following extract from this gentleman's letter:—

"1*st*.—These villages being low, the lands seldom require to be irrigated, inasmuch as the ordinary rainfall there is quite sufficient for purposes of cultivation.

"2*nd*.—The canal does not, and in fact cannot, drain off the water that accumulates in the lands and villages.

"3*rd*.—Some of the sluices of the canal having been closed, the villages could not be drained out of the rain-water that had accumulated in them since the rainy season; and the lands are still under water and quite unfit for cultivation.

"*4th.*—The water having deposited on these lands totally destroyed the paddy, the only crop that grows in that part of the country, and impoverished the ryots and cultivation.

"*5th.*—The accumulation of water in these low lands and villages for a considerable length of time placed the villagers in great difficulty in procuring fodder for their cattle, on the existence of which, as agriculturists, they mainly depend.

"*6th.*—This submerged state of the lands is calculated to generate malaria, which is always produced by an excessive humidity of the soil. Indeed, the people complain of the villages having already become unhealthy."

And yet, if this Bill were passed, the ryots of these unfortunate villages, who could not get crops or fodder for their cattle. would be subjected to a compulsory irrigation rate.

With regard to the provisions of the Bill, BABOO KRISTODAS PAL could not understand why two rates should be levied—the one called "irrigation rate" and the other "protection rate." The protective works were required for the protection of the irrigation works, and thus formed a part and parcel of the irrigation system. Where the embankments would not be required for the protection of irrigation works, they would be put up under the Embankment Act, either at the expense of the State, or of the holders of the land, as the case might be; and if the latter, an embankment cess would be imposed upon them. Surely it could not be intended that a double cess would be levied for embankments. Then again it was provided that all irrigable lands should be liable to the irrigation rate; but how was the area to be defined, and who was to define it? It would seem that the Government would not be bound to supply water at a greater distance than a mile from certain irrigable lands; this provision was not at all explicit, but was that to be the limit of the irrigable area? The Bill was not at all clear upon the point; it left the determination of the boundaries of the irrigable areas to the discretion of the canal officers, who would be naturally anxious to swell the revenue.

Lastly, he was at a loss to know why the carefully prepared sections in the Irrigation Act of 1876 regarding the construction of village channels had been left out of this Bill. Those sections had provided for due compensation to cultivators for lands which might be taken up for village channels; but the present Bill required that a *free passage* should be given for village channels. Now, for every acre of land, no small portion of it would be taken up for village channels, and it did not at all stand to reason that one cultivator should give up his land free of charge for the benefit of another, simply because the village channel would be common. This part of the Bill, BABOO KRISTODAS PAL thought, was a direct invasion of private right.

For these reasons, he continued to say, he could not accept the principle of the Bill. He was free to confess that the Local Government was in a difficult position; it had been required to raise money for the maintenance of the works, and it must fulfil its task. But he would venture to ask why, if seven years ago the Secretary of State, after full enquiry and deliberation, had decided that a compulsory irrigation rate was most objectionable, was there to be no fixity or continuity in the policy of the Government? It could not but be deeply regretted that this retrograde move should be made in a province where the principles of progressive government were so fully recognised.

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The HON'BLE MR. BAYLEY said he had not intended to trouble the Council on that occasion; in fact he had not had the opportunity of reading through the Bill. But since he had been asked by the hon'ble member who opposed this measure to speak to the fact whether irrigation, as far as it had gone in Shahabad, had been a success or a failure, and as he had recently to consider a good deal the question of imposing a compulsory rate, he ventured to trouble the Council with a few remarks.

In regard to the principle of the Bill, he thought the matter had been perfectly settled. He might remind the Council that the principle of making the people pay for protection was not absolutely new, certainly was not confined to payment for the supply of water. The very Bill his hon'ble friend had quoted was based upon that principle; it was the principle that zemindars and others who were supposed to be benefited by the maintenance of embankments were made to pay for the cost of keeping them up. The hon'ble member asked whether the officers who were most interested in the success of irrigation works should be vested with a discretion in the imposition of the rate for the maintenance of those works. To this MR. BAYLEY would reply that precisely the same discretion which was objected to in the case of the Canal Officer was vested in the Embankment Officer in regard to the imposition of the embankment cess, and it was the same in regard to the road cess. The persons who paid for embankments and roads were not asked whether they wished them to be made; the assessment was made upon them, and they paid it.

The main question of the imposition of a compulsory rate had been already settled, and he would not therefore take up the time of the Council in discussing it. To his mind the great advantage of the scheme really was that it did away with the hosts of peadahs and amins and subordinate officers of the Canal Department who, under the present system of measurement and voluntary purchase of water, prayed upon the people who took the water. He recently had a specimen of the operation of the present system brought under his notice in a criminal case which arose out of an irrigation dispute, and the village papers had to be referred to. In 1875 water was given by contract with the headmen of villages. Two men contracted for a certain village, and the water was given. An amin was sent to measure the land to which water was given, and he measured 110 beeghas. The rate at which water should have been given varied between Rs. 3 and Re. 1-4. Instead of submitting his measurement papers accordingly, the amin submitted measurements of 70 beeghas only, assessed at a uniform rate of Re. 1-9, thus swindling his department of the difference; and for this arrangement it appeared that the ryots of the village had to pay the amin Rs. 25. Doubtless this same sort of swindling went on systematically and habitually all the year round. He thought that anything which did away with a system of perpetually recurring demands of small sums, and the consequent opportunities for bribery and extortion, was really, although he scarcely hoped his hon'ble friend would see it, a positive benefit to the ryot.

In regard to the Soane Canal and the remarks of Messrs. Mylne and Thomson to which reference had been made, they said that the ryots of Shaha-

bad had not much confidence in the way the water was given out, nor any certainty that there would be a sufficient supply of water when needed. The history of the canals would throw some light on this assertion. In 1873, before the canals were at all finished, there was fear of great drought, and the canal officers were told that they would have to give water at any risk. They cut the sides of the canals and gave water freely, and the result was that the cultivation on an enormous area was saved: the figures were given in Sir Richard Temple's famine report; it made the difference between famine and no famine in Shahabad. They made no attempt to give the water again the next year; but the cutting of the banks in 1873 threw back the works greatly. In 1874 no water was given. In the autumn of 1875 there was again great fear of drought, and again, although arrangements had not been made, and the irrigation law had not been passed, the irrigation officers were once more called upon to give water. He need hardly state that the water was given; contracts were made; and the Collector was told to try and collect the rates. But he had no law to help him, and had to depend upon the good will of the ryots and moral persuasion: a great amount of money was not collected, and he believed it never would be. Practically until the last autumn there had been no regular system, so that although Messrs. Mylne and Thomson were perfectly justified in concluding that, so far as the past went, the ryots had no confidence in the way water was given out, it would be very unjust to make any comparison on the basis of the hasty transactions above mentioned with the system which would be pursued in the future. MR. BAYLEY thought that if in any part of the country irrigation works ought to succeed, it should succeed in Shahabad; it was a district in which water was needed, and where the people knew the advantages of irrigation. It was merely the substitution of one system of irrigation for another. At present the people gave their own labour in preparing reservoirs and irrigation channels to their villages; they got no payment for the labour, only the food of the labourers for the day: they proceeded upon a principle of co-operative labour of their own. He thought the substitution of one system for another might give some trouble at first, but the people would soon find that the water was given to them cheaper and with less labour than under the system to which they were accustomed.

The HON'BLE THE ADVOCATE-GENERAL said that he would briefly advert to the arguments adduced by the Hon'ble Baboo Kristodas Pal in opposition to this Bill. He was surprised to hear that hon'ble gentleman state that in passing the present Bill this Council would sacrifice principle to injustice. A very cursory glance at the subject in its true bearings would dispose of that view of the proposed measure. In order to avert as far as possible the disastrous results of dreadful calamities which might befall the province of Bengal at any future time, the Government had constructed, and would have to construct, works for purposes of irrigation at a heavy outlay, and would have to maintain them at considerable cost. If contributions towards the maintenance of such works were to be merely voluntary, it might happen that such contribution might be paid once in ten or more years by the people of a particular locality then visited by drought availing

themselves of the water-supply brought to them at great expense for their benefit and convenience; and although matters might not turn out as he had just stated, the Government must, by way of anticipation, have the water-supply ready at hand to be used whenever an emergency arose, and must maintain the same at the cost of the general revenues of Bengal, thereby saddling those who had not the remotest interest, nor were likely to be in any manner directly benefited, with the expenditure incurred in the maintenance of works of irrigation. In the view the hon'ble member took of the matter, this course would be just, equitable, and proper. It was, however, obvious that such a position could not be maintained. It was self-evident that it would be unjust and unfair in the extreme that the maintenance of works constructed in a particular locality for strictly local purposes should be defrayed out of general revenue. It was almost axiomatic that these expenses should be met by those for whose immediate benefit they were incurred, and that was the principle which the present Bill affirmed and proposed to carry out in practice. The maxim "that he who obtains a benefit should bear the burden" was one of universal application. Now it was clear that works of irrigation could not be constructed in future, nor could they be maintained any longer, under the voluntary system now in force, and the sole question regarding them lay between the choice of one of two alternatives, namely, whether they should be maintained at the cost of a small payment by those who were, or were likely to be, benefited thereby, or whether the enterprise should be altogether abandoned. Humanity alone dictated the true answer and pointed out that alternative which should be adopted, and that was the basis of the present measure.

The attempt to escape from local taxation had been invariably founded upon some supposed and occult duty which, it was stated, obliged the Government of the country to do the particular act or execute the works required at particular localities for the due protection of lands and population in reference to which a local tax was needed. The present suggestion, that it was the duty of the Government at its cost to construct and maintain the works under notice, was a repetition of the argument used on the subject of the Embankment Bill, the Road Cess Bill, and others of a like nature; and although this argument had been refuted and its fallacy exposed, its vitality and elasticity were such that it had survived the storms raised against it and continued to flourish with unabated vigour, and to be used wherever it was thought practicable to introduce it. Now, it was well known that zemindars were under the obligation, by virtue of their kaboolyats or contracts with the Government, to maintain embankments and to do other necessary acts for the protection of their estates, and it was for the purpose of providing machinery to carry out that obligation that the Embankment Act was passed. Zemindars had either wholly disregarded or very imperfectly performed their duties, and when the time came to have those duties specifically enforced by an Act, they were found pleading their own laches and inaction as excuses for the non-performance of their duties, and as indicating that these very duties were those which had devolved on the Government. Such was the lame plea then advanced, and of precisely the same elements was the present plea composed.

He thought it could not be denied that cultivators of land, who enjoyed possession of land on payment of rent, were under the obligation of cultivating in a fair and reasonable manner; and it appeared to him that such a form of duty comprehended within it the necessity of some expenditure of money being made by them on subjects or appliances which might enable them to cultivate under unfavourable circumstances. Regulation I of 1793 broadly stated it to be the duty of proprietors of land to exert themselves in the cultivation of their lands (*see* section 7 of Regulation I of 1793).

It was proposed by the present Bill to bring, at a small contribution from persons interested in land, within the reach of cultivators water-supply, to be used at all times if necessary, but more especially in times of drought. Such supplementary assistance, when taken advantage of, operated in furtherance of the obligation on the part of cultivators to which he had adverted; and, inasmuch as it was afforded in consequence of works undertaken by the Government which the cultivators were wholly unable to accomplish by themselves, it was a means of assistance which should be accepted by all prudent and careful cultivators as a great boon conferred by the Government.

Opinions of eminent men had been cited by the hon'ble member as bearing out his views and showing conclusively that the use of water supplied should be voluntary and not compulsory. These opinions were more or less speculative: they were delivered in anticipation of what might occur, and upon a different state of things. It appeared to him that one of the fallacies that lurked in the views of the hon'ble member was the placing of such great stress on opinions not applicable to the present state of things. The ADVOCATE-GENERAL preferred to construct any theory or opinion upon existing facts, and having heard it declared by the Hon'ble Mr. Ravenshaw, whose experience in reference to, and familiarity with, the subject of debate were very great, that the effect of irrigation in those cases in which cultivators had availed themselves of water-supply had been to treble their profits from land so irrigated, and that in his opinion, founded on facts and figures and a survey of events for a great number of years, a general scheme of irrigation in localities where it was needed would be not only productive of much good, but operate to remove the causes of deplorable losses, the ADVOCATE-GENERAL was necessarily led to the conclusion that the proposed measure before the Council was a prudent and laudable one, calculated to confer immeasurable benefits upon the people. Once having realized in his own mind the full force of that conviction, he felt himself bound to give his most unqualified support to, and approval of, the present Bill.

So much, then, for the general principle of the Bill. The hon'ble member had also endeavoured to show that supply of water in times of necessity would be a delusion; that it had in some instances failed at Midnapore, and would do so in all probability when urgently needed. He had from these premises argued that it would be unjust to compel people to pay for a thing which might be of no use to them. It had, however, been provided by section 53 of the Bill that should the water-supply fail, there would be a remission of payment.

It might be that engineering skill had not attained such excellence as to set at rest the question of the possibility of failure under certain contingencies;

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but it must be borne in mind that difficulties were only surmountable by experience and in due course of time. It was to be hoped that precautions would be taken against such failures as were complained of. Where the physical circumstances of particular localities were such that a reasonable certainty was not found to exist in respect of an abundant supply of water at all times, probably works of irrigation would not be introduced into such localities.

To abandon an enterprize so full of hope and so well calculated to prove beneficial would be wholly unworthy of any Government which zealously sought the welfare and prosperity of its people.

The HON'BLE MR. BELL said he wished to make one or two remarks upon an argument which had been very prominently insisted upon by his hon'ble friend opposite (Baboo Kristodas Pal). The hon'ble member had stated that these irrigation canals were only useful in years of excessive drought, and that in such years they invariably failed. Now there was a certain amount of truth in that statement. It was perfectly true that when a canal was fed by a river which had a small catch-basin, and which therefore depended upon the local rainfall for its supply, if the rainfall was insufficient, the water in the river would be insufficient also; and the Midnapore canal, which had been alluded to by his hon'ble friend, was to a certain extent obnoxious to these objections. That canal was fed by the river Cossye, a river with a very short course, and therefore principally dependent for its supply of water on the local rainfall; and in exceptionally dry seasons the water from the Midnapore canal did partially fail, but not to the extent his hon'ble friend supposed. It failed only to a partial extent. The area irrigable by that canal was estimated at 140,000 acres, but in the exceptionally dry season of 1872 the canal only irrigated 48,000 acres. The Council would therefore see that though there was a failure of water, there was not a total failure, but that in spite of the drought it still possessed very great irrigable power.

But the objections which had been brought forward against the Midnapore canal had absolutely no relation whatever to the other two schemes to which the Bill chiefly referred. The Orissa canal was fed by the river Mahanuddy, and the Soane canal by the river Soane. Both these were rivers with very long courses, stretching far into Central India and fed by the mountain ranges in those localities. In 1873, that severe year of drought, when the Midnapore canal partially failed, it was found that the Orissa canal had sufficient water to cover the irrigated area it had undertaken to supply. The same was true of the Soane canal, and therefore he thought the hon'ble gentleman's argument in regard to the canals failing in the time of drought had been completely refuted by the experience of 1873. With regard to seasons in which there was no drought, his hon'ble friend Mr. Ravenshaw had shown from experiments which had been actually made that the outturn of an acre of irrigated land considerably exceeded the outturn of an acre of unirrigated land, though the unirrigated land had enjoyed an abundant rainfall. But MR. BELL thought the comparison made by his hon'ble friend was hardly fair. It was hardly fair to compare irrigated land against unirrigated land when there had been a bumper supply of rain. It might be conceded that irrigation would not be

needed if we could always depend upon the rain; but every one knew that every second or third year there was a deficiency of rain at the proper season, and if the advantages of irrigation were to be fairly tested, a comparison should be made between irrigated and unirrigated land in a year in which there had been a partial failure not amounting to actual drought.

There was another observation which he wished to make upon a remark which had fallen from his hon'ble friend. The hon'ble mover of the Bill had stated that during the 36 years which preceded 1866 the Government had made remissions of revenue amounting to Rs. 45,00,000, and his hon'ble friend Baboo Kristodas Pal, arguing from this fact, contended that it was the interest of Government, as a landlord, to construct these works, to obviate the necessity of making these heavy remissions of revenue. But his hon'ble friend forgot that it was also stated that while the Government remitted Rs. 45,00,000 of revenue, the loss to the cultivators amounted to Rs. 3,00,00,000; that is to say, while the Government lost Rs. 45,00,000, the ryots lost Rs 3,00,00,000. But owing to the construction of these irrigation works there had been no destructive inundations since 1872, and consequently the value of land had very considerably increased. Formerly land in Orissa was sold at fourteen years' purchase; since 1872 the value had risen to nineteen years' purchase.

There was another interesting fact which Mr. Bell would mention to the Council. There had always been a distinction made between lands liable to inundation and lands which were not so liable, lands liable to inundation being assessed at Re. 1-3-10 less than land which was protected from inundation. Now all land within this irrigable area was protected from inundation, and surely it was reasonable that when works which had been constructed at a great cost had secured the country from inundation, and when the zemindar would by reason of these works be enabled to raise the assessment on land which was formerly unprotected to a level with that paid for protected land, the Government which had constructed these works should get some return, and that the whole of the profit should not be absorbed by the zemindars and the ryots alone.

He thought that the Council would agree entirely in what was stated by the hon'ble member opposite (Mr. Bayley) regarding the main provisions of the Bill, and the great advantage which would result to the country by substituting a compulsory for a voluntary rate. The present system, as far as Mr. Bell understood it, was this: the ryot had to enter into a written contract with the Irrigation Department, stating the quantity of land for which water was required. After the contract was made, an officer of the department was deputed to measure the land, and during the whole of the irrigation season constant visits were made by the subordinate officers of the department to see that the ryot was not applying the water to land for which no water-rate had been paid. That system was open to two great objections. First, it entailed upon Government an enormous cost in establishments—a cost which at present was absolutely in excess of the revenue derived by the sale of the water. In the second place, the frequent inspection of the land by the officers of the Irrigation

The Hon'ble Mr. Bell.

Department was extremely distasteful to the ryots. Now by the imposition of a uniform irrigation rate both these objections would be removed, the cost in the working expenses would be greatly reduced, and the ryots would be saved from the constant visits of the officers of the department, to which they entertained a strong objection. He felt convinced that before the Act had been three years in operation every ryot who lived within the irrigable area would be a convert to irrigation, and those districts through which these irrigating canals passed would become the most fruitful and most prosperous in Bengal.

His Honor the President said he did not understand that his hon'ble friend intended to oppose the reading of the Bill, and therefore it was not necessary for him to say much. But his hon'ble friend had, as usual, stated his objections to the principle of the Bill very ably and very clearly, and it was due to him that His Honor should say something in reply to the remarks which had been made.

In addition to other fallacies which had already been exposed by the hon'ble and learned members on the right (the Advocate-General and Mr. Bell), there were two great fallacies which pervaded the arguments of his hon'ble friend and misled him in respect of all his conclusions. One of these two fallacies was that the object of the Bill was to impose on the people of Orissa and Behar the duty of paying the whole of the interest on the expensive works which were constructed for the purpose of irrigation. The other fallacy was that there was an individual Government, which possessed a purse of its own quite distinct from the people.

As to the first fallacy, he would observe that the Bill did not do anything of the nature of that inferred by the hon'ble member. If it did do so, he should not have had to ask the Council last week for leave to bring in a Bill for raising a general cess throughout the province, for the object of that Bill was to raise the money necessary to meet the cost of these works. The object of the present Bill was simply to supplement that, and to give effect to the very just and reasonable principle that the people who benefited specially from these works should pay some little sum more than those who received no benefit from them. All the arguments which had been quoted by his hon'ble friend rested upon the two great fallacies to which His Honor had alluded; and the views of the Secretary of State and of Sir George Campbell which had been quoted also referred to a perfectly different state of things to that which they were discussing. If the present measure had ever been laid before Sir George Campbell, His Honor had no doubt that he would have held very different views. The measure then before him was one for imposing on the people of Orissa the whole burden of works which cost many millions of money—a burden which he well knew the people of Orissa were unable to meet. What was now proposed was to impose a small rate, which would hardly do more than meet the cost of the establishment requisite for delivering the water. If we could impose upon the people of Orissa the whole cost of these works, we should have had no further occasion to tax the province generally. He thought his hon'ble friend would see that it was one thing to levy a light cess to cover

the working expenses of irrigation works, and on a slight portion of the interest on the outlay on the people of the parts of the country who benefited from the works, and another thing to throw upon those people the whole burden of the interest on the entire capital. From the measure now proposed we hoped to realize only some eight or ten lakhs of rupees. The amount to be met for interest upon these works was twenty-three lakhs. What had been done had really been what his hon'ble friend desired. The burden had been, as he suggested, taken over by Government. But then the question arose, what was this Government? Hitherto it had been the Government of India, and the way that Government paid for the works was by taxing the people of India generally.

The people of all India paid for watering the fields of the people of Orissa and protecting them from risk of drought. Now, on what His Honor thought a right and just principle, it had been determined that the Government which was to meet the expense of keeping up these works was the local Government, and the people whom that Government represented were the people of Bengal; therefore under these Bills taxation was about to be imposed by the Government, which would be raised from the people generally whom that Government represented, while some small portion of it would be raised from the people of the districts specially protected and benefited. He need hardly point out that the Government could only pay for such charges as this by taxation in some form or another; it had no reserve stock of its own in which the people had no interest and concern, and the only question at issue was who should pay for local works—local interests represented by local Government, or imperial interests represented by the Imperial Government? He could not understand how there could be any doubt on the subject.

His hon'ble friend seemed to think that the Government was in a peculiar position in respect to Orissa on account of what he called its relation to the people as landlord. But he was under a misapprehension, because, although under the present system of Orissa the assessment of revenue was liable to periodical revision, the Government was no more the landlord in Orissa than it was in the Punjab or anywhere else. The Government had only interest in the general progress and prosperity of the country arising from its power of making a periodical re-settlement of the land revenue. The principle of making the people pay something towards the benefit they derived from a water-supply was no new principle, as the hon'ble gentleman seemed to think. It had been approved over and over again by this Council in the embankment laws and in the drainage laws, and in the laws relating to the levy of water, police, drainage, and lighting rates in towns; and he thought his hon'ble friend would be surprised if a proposal had been made to call on the people of Orissa to pay for the water required by the people of Calcutta. The people of Calcutta did not do that, but they had submitted to a tax for the introduction of a water-supply in the town, for lighting and sanitation, feeling that they might reasonably be asked to pay for divers benefits they received. The Bill before the Council was of the same nature; the people of Orissa had benefited by the construction of the irrigation

His Honor the President.

works, and they were now asked to pay something for their water-supply. He heard it very constantly asserted by those interested in the land that every burthen was thrown upon the land; but he ventured to think that the tendency of modern legislation was the other way. Merchants, traders, and shopkeepers were made to pay for everything that was given to them in the shape of water, light, and police; while the cultivators of the soil had not been made to pay for anything. The cultivators of Bengal, and indeed the landed interest generally, paid little or no taxation; they paid their rent for their land, or the revenue which they had agreed to pay when taking a settlement for their estates, and as salt tax they paid something very nominal; but for all the benefits of good administration and protection they paid absolutely nothing else. Whenever proposals were made with the object of making those interested in the land pay something, the objection was raised that they were made to pay for everything. He believed that there never was such a delusion. He thought that on further consideration his hon'ble friend would see that the principle of the Bill was not what he believed it to be. It was not a Bill to impose a very heavy burden on the people, but to make them pay something very much below the value, and still more below the actual cost, of certain definite benefits conferred on them.

Many of the objections as to details which had been made had already been met by the hon'ble members who preceded him, and there was therefore no necessity for him to say anything further; but he might observe that his hon'ble friend had made a great deal of the failure of the Midnapore canal. But that canal, even admitting that it deserved all that was said about it, was, as his hon'ble friend Mr. Bell had pointed out, only a small portion of the scheme, and His Honor did not intend to apply the principle of the Bill to any area in Midnapore regarding which they had the slightest doubt. He had given instructions that the area within which the Bill was to apply should be restricted to the utmost degree, so that there should be no part of a district subjected to the rate to which the Irrigation Department was not in a position to supply water. The Midnapore canal signified very little one way or the other: it cost little, it was calculated to bring as little. Therefore, every argument based on the failure of water-supply in the Cossye river might, as had been shown by his hon'ble friend Mr. Bell, be left out of the question. The Government would, under the section of the Bill which had no doubt attracted the hon'ble gentleman's notice, have no power to impose a cess on any part of the country in which it was not in a position to supply water and also to effect good and efficient drainage.

Then, he thought, the hon'ble member, in his objection to the arbitrary power which he believed was to be conferred upon the canal officers, had overlooked the provisions of section 71 of the Bill. Really the whole thing rested upon the Collector of the district, and His Honor did not know any officer who was so likely to be disposed to guard the rights of the ryots as the Collector. By section 71, when the list of estates and tenures within the irrigable area was prepared, they would be checked by the Collector, and after approval by him would be published; and although the detailed work would

be left in the hands of the canal officer, the Collector was responsible for the justness and correctness of the whole of the work. His hon'ble friend, as a member of the Select Committee, would have an opportunity of suggesting any further protection he considered necessary.

The HON'BLE MR. RAVENSHAW observed that he had again to call attention to the fact that the irrigation works were for the purpose of providing irrigation as well as protection and drainage to the whole of the areas to which the Bill was intended to apply. He thought that that alone was quite sufficient to dispose of any objection to the Bill.

The motion was then agreed to and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Reynolds, the Hon'ble Mr. Bayley, the Hon'ble Baboo Ram Shunker Sen, the Hon'ble Baboo Kristodas Pal, the Hon'ble Nawab Meer Mahomed Ali, and the mover, with instructions to report in three weeks.

The Council was adjourned to Saturday, the 28th instant.

Saturday, the 28th April 1877.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble H. J. REYNOLDS.
The Hon'ble T. E. RAVENSHAW.
The Hon'ble S. C. BAYLEY.
The Hon'ble H. BELL.
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR.
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR.
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR.
The Hon'ble NAWAB MEER MAHOMED ALI.
The Hon'ble H. F. BROWN.
The Hon'ble F. JENNINGS.
The Hon'ble RAJA PRAMATHA NATH ROY, BAHADOOR.

PROVINCIAL PUBLIC WORKS CESS.

THE HON'BLE MR. REYNOLDS presented the report of the Select Committee on the Bill to provide for the levy of a cess for the construction and maintenance of provincial public works. It was not necessary for him to make any lengthy remarks on the subject, as the Committee had made hardly any changes in the Bill, and such as had been made were of no great importance. It had been provided that the notices served under the Road Cess Act might also include notice of the amount due on account of the public works cess. This amendment was intended merely to promote convenience and to save expense. The two cesses would, however, be kept separate and be specified separately in the notice. But as both the cesses were payable in the same instalments and on the same dates, there was no necessity for the issue of

separate notices. The Bill also provided for the publication of an annual statement of accounts, and conferred on the Lieutenant-Governor the same power to make rules as was conferred by the Road Cess Act. These were all the amendments that had been made by the Select Committee, with the exception of one or two verbal alterations. In the preamble of the Bill the word "charges" was inserted in addition to the words "construction and maintenance." It had since been suggested to him that there might be a doubt whether that would be sufficient to cover the charges for interest. The word was inserted with the express object of covering those charges, and it appeared to MR. REYNOLDS that it would be sufficient to include the charge for interest. He would now move that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The HON'BLE BABOO KRISTODAS PAL said that, before the Council proceeded to take the report of the Select Committee into consideration he wished to make one remark. The object of the Bill was to enable the local Government to raise sufficient funds for meeting the liabilities which had been thrown upon it by the Government of India. The amount which the local Government was required to raise was Rs. 27,50,000. But from information which he had received from the mofussil from well-informed persons, it appeared that the new Land Registration Act, which had been lately put into force, was likely to bring in a large amount of stamp revenue; it was estimated by competent persons that the increase of stamp revenue might amount to Rs. 50,00,000. He was not in a position to say whether that estimate was correct; but if the Government got a good windfall, it was worthy of consideration whether it was necessary to impose the new tax this year. The stamp revenue derivable on registration was sure; applications must be made by landlords, and as a large number of powers-of-attorney must be executed, a large accession of revenue might be thus looked forward to. His object in drawing attention to the subject was that as the stamp revenue had under recent orders been made over to the local Government, the increase would go to that Government, and if it should obviate the necessity of additional taxation this year, the Council would gain time and would be better able to adapt the scheme of taxation to the views, feelings, and wishes of the people. He did not say that this windfall would obviate the necessity of taxation altogether, but it would give time to the Council to consider the most suitable form of taxation. He did not intend to make any motion, but merely threw out this suggestion for the consideration of the Council.

HIS HONOR THE PRESIDENT said that, with reference to the remarks of his hon'ble friend, he must say that he was not prepared to withdraw the present Bill upon the very vague statement that there was something being done which might bring in an increase of the stamp revenue. He had no doubt that the working of the Land Registration Act would have some effect upon the stamp revenue, but what the result would be nobody could say, or what amount would be collected under that Act in the different districts. Therefore he thought that on anything so vague he should not, after accepting the responsibility

he had incurred in regard to providing the interest on the capital expended in extraordinary public works, be justified in setting aside the Bill before the Council on an estimate of possible receipts under the Land Registration Act. If there was any unexpected income of money under that head, it would stand to the good of the province and might possibly go towards the reduction of taxation in the coming year.

The motion was then agreed to.

Section 1 empowered the Lieutenant-Governor to exempt any district or estate from the operation of the Act. On the motion of the HON'BLE MR. REYNOLDS the words "and may at any time, by a similar notification, cancel such exemption" were added to paragraph 2. It seemed necessary to provide for a possible cancellation of an order of exemption.

The HON'BLE MR. REYNOLDS withdrew the amendment to section 8 of which notice had been given.

The HON'BLE NAWAB MEER MAHOMED ALI said that under the Road Cess Act the cess was recoverable by sale of the moveable property of the defaulter. It was difficult to conceive why the mode of realization under the present Bill should be different. Arrears of income tax or license tax were realized from the defaulter by civil suit, and in such cases a sum of double the amount due was levied by way of penalty, and realized by sale of the moveable property of the defaulter. But section 8 of the Bill was more stringent than all the former Acts that had been passed. No difficulty had, he believed, been experienced by Government in realizing any tax that had been imposed upon the people; he was at a loss therefore to know why such a stringent provision had been adopted in this Bill, especially when it was considered how submissive and law-abiding the people of Bengal were reputed to be. He thought an arrear of revenue and an arrear of tax should not be realized in the same way. He would therefore, with His Honor's permission, move as an amendment in section 8 the substitution of the words "section 23 of Act X of 1871" in lieu of all the words after the word "demand" in line five.

The HON'BLE MR. REYNOLDS said that this section was unanimously agreed to in Select Committee. He thought his hon'ble friend was under a misapprehension as to the effect of the section. It was not proposed to recover arrears under the Sale Law, but under the certificate procedure of Bengal Act VII (B.C.) of 1868, which was a more convenient mode of recovery than the procedure prescribed in section 23 of the Road Cess Act. The procedure of Act VII of 1868 was not one of unusual stringency, as the same procedure applied to the butwara law, the embankment law, and the irrigation law, and several other public demands were also made recoverable under that procedure. He might also mention that the Board of Revenue had represented that the procedure prescribed by the Road Cess Act was cumbrous and inconvenient and had suggested its amendment, and therefore there was no necessity to retain in any new measure a procedure which had been found to be inconvenient.

The HON'BLE NAWAB MEER MAHOMED ALI observed that these cesses were generally realizable from the zemindar, and it would be sufficient to make

them recoverable by attachment and sale of moveable property, as a zemindar would immediately pay up the amount of cess to preserve his position and honor and dignity. As he had said before, the people of Bengal were more submissive and obedient to the law than the people of any other part of the country, and he thought some special consideration should be shown to them.

The HON'BLE MR. REYNOLDS said he thought that the wishes of his hon'ble friend would be met if in section 5 of the Bill the figures "23" were inserted between the figures "22" and "24," and if section 8 were omitted altogether. It did not appear to him to be advantageous to maintain the road cess procedure, but perhaps it was desirable to observe the same procedure for both cesses for the present; and in the event of the Road Cess Act being amended hereafter, the certificate procedure under Act VII of 1868 might be made applicable to the collection of both cesses. He would move the amendments to which he had referred.

The HON'BLE MR. REYNOLDS' amendments were put and agreed to.

RATE UPON IRRIGABLE LANDS.

THE HON'BLE MR. RAVENSHAW said that the Select Committee on the Irrigation Cess Bill had found it impossible to submit their report within the time prescribed. He would therefore move for an extension of two weeks' time, and that the HON'BLE MR. BELL be substituted in the Select Committee for the HON'BLE MR. BAYLEY, who would shortly leave the Presidency in attendance upon His Honor the Lieutenant-Governor.

The motion was put and agreed to.

The Council was adjourned to Saturday, the 5th May.

Saturday, the 5th May 1877.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The Hon'ble G. C. PAUL, *Acting Advocate-General.*
The Hon'ble H. J. REYNOLDS.
The Hon'ble T. E. RAVENSHAW.
The Hon'ble S. C. BAYLEY.
The Hon'ble H. BELL.
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR.
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR.
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR.
The Hon'ble NAWAB MEER MAHOMED ALI.
The Hon'ble F. JENNINGS.
The Hon'ble RAJA PRAMATHA NATHA ROY, BAHADOOR.

PROVINCIAL PUBLIC WORKS CESS.

THE HON'BLE MR. REYNOLDS postponed the motion which stood in his name, for the passing of the Bill to provide for the levy of a cess for the construction,

charges, and maintenance of provincial public works in Bengal, until after the consideration of the amendments of which notice had been given by the hon'ble member opposite, Raja Pramatha Natha Roy.

The HON'BLE RAJA PRAMATHA NATHA ROY said there was no provision in the Bill requiring the cess to be realized from the sharers of an estate. The Road Cess Act required the holder of an estate to pay the entire amount of road cess, leaving him to recover from his co-sharers such sums as might be payable in respect of their shares by the tedious process of a civil suit. That procedure was adopted in order to make the task of collection easy to the Government. But as a matter of fact, zemindars found it so difficult to realize anything from their co-sharers that there was hardly an instance of one shareholder attempting to recover from another. The passing of the recent land registration law would enable the Collector to ascertain who were the sharers in an estate, and it would therefore now be easier for the Collector to realize both the road cess and the public works cess from all co-sharers than to oblige landholders to recover from their co-sharers. The object of the amendment he was about to move was to render sharers who were separately registered under sections 10 and 11 of Act XI of 1859 liable for the payment of the proportion of the public works cess which was payable in respect of their shares. He moved that the following section be introduced after section 5:—

Section 6.—"In the case of any joint estate, every sharer of such estate shall be entitled to pay his share of the amount of the public works cess to the Collector in the manner prescribed by section 22 of the said District Road Cess Act separately, and shall not be liable to pay more than his share in the case of any default on the part of his co-sharers."

The HON'BLE MR. REYNOLDS said he regretted that these amendments had been brought forward, because, if the Council departed from the principle of the procedure under the Road Cess Act, it would produce confusion in the accounts and would render it difficult to assess and to collect the rate. There was one point, and only one, in which the Select Committee thought it desirable to depart from the procedure of the Act of 1871: it was the provision to substitute the certificate procedure of Act VII of 1868 for the procedure laid down in section 23 of Act X of 1871. But at the last meeting of the Council the recommendation of the Committee in that respect was reconsidered, and it was determined, on the motion of the Hon'ble Nawab Meer Mahomed Ali, that the procedure under the Road Cess Act should be retained. MR. REYNOLDS accepted that amendment, not because he thought the procedure of the Road Cess Act was preferable to the procedure of Act VII of 1868, but because he understood it to be the sense of the Council that the road cess procedure should be temporarily retained, although the proposed departure from it might be an improvement. Therefore he thought it undesirable that the Council should now go into the point whether any improvements or alterations of procedure might now be made.

There were, besides, strong objections to the principle of the amendment before the Council. The principle of the road cess and of the public works cess was that those who were liable for the payment of the Government revenue should also be liable for the payment of the cess. In the

case of sharers in joint estates all proprietors were jointly and severally liable for the payment of the Government revenue, and they were similarly liable for the payment of road cess; but the amendment proposed that every sharer should be allowed to pay his share of the road cess separately in proportion to the amount of his share. He could do that now if he had opened a separate account under Act XI of 1859; but so long as he did not do so, MR. REYNOLDS thought it was as objectionable to authorize separate payment of the road cess or of the provincial public works cess as it would be in the case of the land revenue.

The HON'BLE BABOO KRISTODAS PAL said he did not clearly understand whether it was considered objectionable to realize the provincial public works cess directly from sharers whose names were registered under Act XI of 1859. The intention of the amendment appeared to him to go only so far.

The HON'BLE MR. REYNOLDS said he believed that it was the practice at present to receive payment of road cess from registered shareholders. But the amendment would include sharers whose names were not so registered The road cess was payable by the persons by whom land revenue was payable. If a separate account was opened for the payment of land revenue, then the road cess would be separately payable by the persons who had so opened separate accounts. But there was no mention in the amendment confining its operation to recorded sharers who had opened separate accounts, and therefore under it the provincial public works cess would have to be collected from every joint sharer.

The HON'BLE RAJA PRAMATHA NATHA ROY observed that if he was informed correctly, the practice under the Road Cess Act was to realize the cess from one sharer, even where the other sharers had opened separate accounts under Act XI of 1859; and there was no provision in the Road Cess Act to prevent such a procedure.

The motion was then negatived.

HIS HONOR THE PRESIDENT said he thought it was hardly desirable to proceed now to amend the Road Cess Act. It seemed almost a pity to take up one or two sections and amend the Act piecemeal. There were other questions which would come up, and which might sooner or later make it desirable to amend the Act. He thought it was better to let these amendments stand over until the Council could take up a well-considered general amendment of the Act. The amendments might all be very good, but this was hardly the time to consider them.

The HON'BLE RAJA PRAMATHA NATHA ROY said he would be prepared to withdraw his amendments if the proposed section 9 were agreed to. At present no remuneration was given to the persons who had to collect the cess from the ryots. The agents employed by the zemindars for the collection of rents demanded additional pay for the additional work imposed upon them. There were cases in which these agents received a commission on the gross collections made by them, and they were now taking an additional percentage for the collection of the road cess, and they would no doubt also demand further remuneration for the collection of the public works cess, and these percent-

ages the zemindars would be obliged to pay in addition to the cesses which they were called upon to collect: they had, in fact, to pay for the collection of Government cesses, which was very hard upon them. He therefore moved that the following section be introduced after section 5, and he hoped it would be agreed to:—

Section 9.—"It shall be lawful for the person to whom any sum shall as public works cess have been directly paid by the holder of any tenure or tenures for which no rent is paid, to retain one-fourth thereof as and for his remuneration for costs and risk of collecting the same; and where such sum shall have been paid as aforesaid by any cultivating ryot, to retain fifteen per centum thereof as and for his remuneration as aforesaid."

His Honor the President said he thought this section stood in exactly the same position as the other sections proposed by the hon'ble member. It might be right, or it might not, that a certain amount of commission should be given to zemindars to cover losses from bad debts and to cover the cost of collection. At present the Act which had been passed by the Council for the imposition of the road cess deliberately ruled otherwise. Therefore he did not think that at the last moment it was quite right to propose any alteration of the scheme of the road cess, especially on the very short notice which had been given. No doubt the amendment was upon a subject which was worthy of consideration, and His Honor had already publicly said that he was quite prepared to consider what remuneration should be given to the zemindars for the collection of these cesses. But he did not think that the Council would be in a position, without consulting the local officers of Government and others interested, to say what was the exact amount of *mashaira* which should be allowed to zemindars to cover their losses. He therefore thought the consideration of this section should stand over until the general amendment of the Act was taken up, so as to enable the Government to inquire what was best to be done in regard to this matter.

The Hon'ble Raja Pramatha Natha Roy said that under the circumstances stated by His Honor the President he would withdraw the amendment.

The amendment was then by leave withdrawn.

The Hon'ble Mr. Reynolds moved that the Bill be now passed. He said it was not necessary for him on this occasion to go into the principle of the measure, which had been formerly recognised by the Council, but he would wish to be allowed to make a few remarks on what was said at the last meeting of the Council with reference to the necessity for this Bill. It was suggested by the hon'ble member opposite (Baboo Kristodas Pal) that possibly the receipts from the stamp revenue under the Registration Act might be so large as to dispense with any necessity for further taxation, and Mr. Reynolds thought that an estimate was made that the Government might possibly receive 50 lakhs upon that account. It was very difficult to make any estimate of what the real receipts in consequence of the Registration Act would be. Government had called for information on the subject from district officers, but that information was not yet available. As far as he had been able to ascertain, from such information as he had collected, the receipts from this source would be very much smaller than had been suggested, and in fact would be very small

indeed. The number of estates on the towzee was about 150,000—the exact number was 151,589. Taking them at 150,000, and estimating that we should have three applications from sharers in each estate, we should have 450,000 applications in respect of estates paying revenue to Government. Besides that, we should have to take into account *lakhiraj* estates and applications from managers and mortgagees. The former were required, and the latter permitted, to make applications under the Registration Act. It would be very difficult to say what number of *lakhiraj* lands there were, but he believed it would be considered a liberal estimate if he took the number of these at the same number as estates paying revenue to Government. That gave a total of 900,000 applications. Besides that, we had to take into account the extra stamp fees from *mooktarnamahs*. A great proportion of the applications for registry would be filed by *mooktars* possessing general powers of attorney, and would not require fresh stamps. Then we must consider that perhaps one-third or 300,000 *mooktarnamahs* would be filed in connection with these applications, making in all a total of 1,200,000 applications and mooktarnamahs, which, at the stamp duty of eight annas each, would make a total of six lakhs of rupees. He did not take into account the revenues derived from fees realized from registration of transfers, because they did not form part of the provincial revenues, but would be credited to the Imperial Government. We then had to consider how much of these six lakhs would come into the coffers of the Government of Bengal. The notification under the Act declared that all persons should register by the 1st of November, and a period of six months was given, after which certain disabilities and penalties would be incurred by those who had not registered. It had not been ascertained yet quite exactly how many applications had been made, but we had to remember that the stamp revenue was made over to the provincial Government from the 1st of April; so that five out of the six months would elapse before this revenue would belong to the local Government, and for those five months it would belong to the Government of India, and the Government of Bengal would receive the receipts only for a single month. He could hardly say what the amount of revenue during that month would be, but there could be little doubt that there would also be many claims which would be brought forward after the six months had expired; and on the whole he thought it might be safely said that the additional revenue which would accrue to the local Government from the operation of this Act would not exceed five or six lakhs of rupees. It must also be remembered that the local Government would have to make good to the Government of India the sum of 2¾ lakhs in addition to the estimated revenue from stamps, so that there would really be only a small surplus under the provincial Land Registration Act, and such surplus was entirely insufficient to meet the additional calls which we should be obliged to meet in respect of provincial public works. He thought he need not detain the Council with any further remarks.

The Hon'ble Baboo Kristodas Pal said that when, at the last sitting of the Council, he referred to the increase of stamp revenue which might be expected from the enforcement of the Land Registration Act, he said he had no distinct

data before him such as would enable him to give an estimate of the exact amount to be derived, but from information he had received from competent persons in the mofussil, he was led to believe that it would at least cover the amount which the local Government sought to raise by the two Bills now before the Council. He thanked the hon'ble member for favouring him with the data which he had obtained for forming an approximate estimate of the expected increase of revenue from the Land Registration Act. That amount, the hon'ble member thought, would not exceed four or five lakhs of rupees, and the hon'ble member had given his reasons for this estimate. BABOO KRISTODAS PAL dared say the hon'ble member had made the fullest inquiry before arriving at that conclusion; but it struck him that there was one important omission in his first item. If he had followed the hon'ble member correctly, he said that the number of estates in the Lower Provinces of Bengal amounted to 150,000. If he remembered aright the figures given in the land revenue reports of the Board of Revenue for the last three or four years, he believed that the number of estates in the permanently-settled districts was 150,000. Now the districts of Orissa—Balasore, Cuttack, and Pooree—so far as he was aware, contained a multitude of small estates, some of them comprising only five or six beeghas of land, and the number of shareholders was again very large. So he was not quite sure whether the small estates in Orissa, which were so large in number, had been included in the grand total mentioned by the hon'ble member. A large revenue, he thought, might be expected from the working of the Land Registration Act in Orissa alone. Last week he received a letter from Cuttack, in which it was stated that in March last the sale of stamps for purposes of the Land Registration Act produced Rs. 50,000 in the district of Cuttack alone. Then again he might mention that he had a conversation lately with one of the most experienced judicial officers in Tirhoot, who told him that the sale proceeds of stamps in connection with the Land Registration Act in that district would probably amount to Rs. 1,00,000. In that district the estates were small, and the number of sharers very considerable. Of course he spoke only from what he had learnt from others. He had no official data before him, and he might state that he would be greatly disappointed if the increase of revenue from the sale of stamps for purposes of the Land Registration Act did not exceed Rs. 5,00,000.

Then, with regard to the remark of the hon'ble member, that the notification requiring people to register their titles to lands, which was issued in November last, allowed six months from that date, and that the sale of stamps for applications made previous to April would not benefit the provincial revenues, BABOO KRISTODAS PAL fully admitted that fact; but he believed the hon'ble member was aware that there had been a rush for registration only since April last, and that people had been sleeping, as it were, over the thing for the past four or five months, and had rarely taken active steps for filing applications. Of course there had been applications filed during the preceding five months, but he did not think the number was very great; so that the bulk of the increased revenue would be derived by the local Government, since the stamp revenue had been made over to the local Government from the 1st of April last.

In conclusion, he desired to state that, consistently with what he had said on the occasion of the introduction of the Bill into Council, when he took the liberty to object to the principle of the Bill, he felt it his duty to enter his formal protest against the passing of the Bill into law.

The Hon'ble Baboo Isser Chunder Mitter said he wished to add a few words in respect of the revenue which was expected to be derived from the sale of stamps in connection with the operation of the Land Registration Act. Whatever might be the revenue which might come in under this head, against the receipts from the sale of stamps must be set down the expenditure which must be incurred in carrying on the operations consequent on the registration of estates. He was in a position to say that for every estate on the towzee there would be an expenditure of about three rupees for the service of processes, which expenditure would go a great way to take up the receipts, which might be got from the sale of stamps. He was aware that there was another head under which there would be receipts, namely fees for registration; but these fees would perhaps scarcely suffice to cover the cost of the innumerable forms which had been printed. And if all these things were taken into consideration, he believed that the anticipated increase of revenue would not be large.

His Honor the President said he thought that there was only one point bearing upon this question, and that was whether he had any such knowledge of the anticipated increase of revenue as would justify the Government in withdrawing this Bill. Whatever information we possessed of the receipt of Rs. 20,000 here and Rs. 20,000 there was all speculative, and he was quite certain that it would not in any way meet the requirements of the Government in respect of interest upon provincial public works. He did not understand that the hon'ble member now maintained that the Government was in such a position as to warrant it in relying on that revenue to meet the requisition of the Government of India.

In addition to what had been already said as to the possible receipts under the Land Registration Act, he might state that he had obtained last night an exact account of the receipts in one division containing five or six very large districts. That account showed a total increase of Rs. 70,000 in the stamp revenue in that division, and that entirely bore out the rough estimate which had been made by the revenue officers of the Government at his request, by taking the number of estates in the province and the value of the stamp involved in each registration.

The motion was then agreed to and the Bill passed.

COMPULSORY RATE ON IRRIGABLE LANDS.

The Hon'ble Mr. Ravenshaw said that, in dealing with the compulsory Irrigation Bill, the Committee had found considerable difficulty in so adapting the procedure of the Bill as to suit the peculiarities of different parts of the country; and, moreover, it had been found that in some places time might properly be afforded to zemindars and people to construct field-channels and prepare themselves for the system of compulsory irrigation. It had also been

pointed out that in some districts cadastral surveys had been carried out, and it was very desirable that survey of irrigable areas in all districts be completed, so that the Bill might provide one procedure for all parts of the country. Therefore it was desirable that postponement of the Bill be allowed until the cadastral survey in Orissa was carried out. He understood also that the Government proposed to depute a special officer to make local inquiries and to advise the Committee in working out the different clauses of the Bill, and as to the best manner of adapting its procedure to suit local requirements. In consideration of these circumstances, he had the honor to move that the Select Committee be allowed six months' time to enable them to report on the Bill. During that time it was hoped that cadastral surveys and construction of field-channels would be pushed on to completion.

The HON'BLE MR. BAYLEY observed, with reference to what had fallen from the last speaker, that he did not think there was any hope of the cadastral surveys being completed in the different districts in so short a time as six months.

The Council then adjourned *sine die.*

Saturday, the 29th December 1877.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. J. Reynolds,
The Hon'ble S. C. Bayley,
The Hon'ble H. T. Prinsep,
The Hon'ble A. Mackenzie,
The Hon'ble Baboo Ramshunker Sen, Rai Bahadoor,
The Hon'ble Baboo Isser Chunder Mitter, Rai Bahadoor,
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor,
The Hon'ble Nawab Meer Mahomed Ali,
and
The Hon'ble H. F. Brown.

NEW MEMBERS.

The Hon'ble Mr. Mackenzie and the Hon'ble Mr. Prinsep took their seats in Council.

STATEMENT OF THE COURSE OF LEGISLATION.

His Honor the President said:—"Before we proceed to the business of the Council as specified in the list which has been circulated, it will perhaps be convenient that I should attempt to bring together the threads of legislation in respect to this Council as they were broken off at the last meeting in the summer, and to point out what Bills we now have to consider in Council. First of all there is the Excise Law which we passed last session, but which was vetoed by the Governor-General, on the ground that section 40 of the Act passed by us interfered with the jurisdiction of the High Court and was therefore *ultra vires* of this Council. This is an objection which is unfortunately capable of application to nearly every Act which comes before us, and the interpretation which has been put upon the Indian Councils' Act, though no doubt correct, is one which really restricts the authority of the local Councils so much that their powers have become exceedingly limited. The objectionable section in the Excise Bill has now been amended, but there are other parts of the Act which are considered to require examination and amendment, and I propose to refer the Bill back to a Select Committee.

The next Act passed by the Council, which has been vetoed, is the Court of Wards' Act. This Bill also I propose to refer back to a Select Committee, as there are certain points connected with it which seem to require further consideration.

The Ghatwali Police Bill is still before the Council. It, like the Excise Bill and the Court of Wards' Bill, has been vetoed by the Governor-General, and will require a considerable amount of alteration.

The Ferries Bill, which has been before the Council, I do not propose to proceed with. I cannot say that the principle upon which the Bill was based is in accordance with my view, and, under existing circumstances, it is not deemed advisable to bring it forward, and I think the subject may be dropped.

Next in order comes the Irrigation Bill. The Council will recollect that we postponed the consideration of this Bill for two reasons: firstly, because it was deemed necessary that investigations should be made on the spot as to the rights and interests of tenants and cultivators; and secondly, because it was not expected that much could be done until the cadastral surveys had been completed. These surveys have not yet been finished in Orissa; and in the meantime the agricultural classes in Behar have shown so thorough an appreciation of the scheme, and are so sensible of the benefits to be derived from canal irrigation, that I think it will be better, at present at least, to leave things as they are, as we shall perhaps get more under the voluntary system of working than under that contemplated in the Bill; while it is of course fairer in principle that the supply of water should be a matter of bargain between the Government that has the water to let and the people who wish to buy. I have lately been in communication with the leading zemindars of that province, and it appeared to be their wish to enter into contracts with the Government to take the water from the canals and thus to guarantee a certain amount of return to the State; whilst they themselves would distribute the water to their tenants, and recover the money which they advanced from their tenants. Several of the zemindars expressed a wish to do this, and a few days ago there was a meeting of several of the influential residents of Shahabad with Colonel Haig, the Chief Engineer in the Irrigation Department, and he seemed to think that a scheme of this sort might be carried out with advantage. I may mention that the Maharajah of Dumraon, who was greeted by the opponents of the irrigation scheme last year as being fully conscious of the ill-effects of irrigation, has applied for the services of an engineer whom he proposes to pay himself, in order that he may lay out in the whole of his estates village distributaries to carry the water; and things are on the whole so promising, that our difficulty is rather to supply sufficient water than to get rid of the water we have. I forget the exact quantity of water which has been thrown on the fields during the present rubbee season, but it approaches 200,000 acres of land, which was more than we expected to have been able to supply in the present condition of the canals. Similarly there was a large demand also for the khareef crop. With regard to Orissa the state of things is not so promising. Still even there there has been some inclination to enter into leases to take water, and I hope that by degrees something more may be done. But it is possible that with regard to Orissa we may have eventually to proceed with a scheme for an irrigation cess; but the cadastral survey has not gone far yet, and I do not intend to propose any measure for Orissa this year.

The President.

The next Bill is the Labour Districts Emigration Bill for Chittagong and the Chittagong Hill Tracts. We have not yet received the report of the Select Committee on this Bill, but I hope it will be brought forward at an early date, though the matter is not one which presses.

The Chota Nagpore Rent Bill has been drafted, and has been set down in the list of business to be read in Council this day.

The Bill relating to tolls on rivers and in market places is a Bill which I do not approve, and I propose to strike it out from the list of our current business.

I next come to the Rent Bill. As regards this Bill, I must explain to the Council that this subject is also one which, under the recent decision as to the powers of the local legislatures, is beyond the scope of the powers of this Council, and therefore it can be said to be no longer in the list of current business. I alluded to this subject last year, and pledged myself to give increased facilities for the recovery of rent, and accordingly I think it my duty to state how the matter stands. During the past year I have travelled over a good deal of the country; I have made careful inquiries, and have endeavoured to ascertain as far as possible the views of the officials and of the native community on the point. There are one or two principles on which all are agreed, and these we propose to embody in a Bill in such a form and shape as may be alike acceptable to the Council of the Governor-General, before which it will have to go, and to all classes of those concerned. The Bill will leave, as heretofore, the duty of deciding rent suits in the hands of the civil courts. But with regard to all that class of cases which has respect to the recovery of rent at existing rates, some more speedy remedy will be proposed. We shall be careful to guard against mixing up demands for rent and matters involving, by implication or otherwise, questions of right or title to land; and what is now being discussed by the gentlemen to whom I have entrusted the duty of considering the subject, is how to do this in such a manner as to get rid of serious difficulties in the summary administration of the present rent law in respect to questions of right to land, which are often screened under applications of recovery of rent. However, as far as I have been able to gather from them, they appear to see their way to provide a speedy and summary process in the decision of cases and the execution of decrees in respect to what are purely demands for rent at existing rates, which shall not interfere with questions of right or title to land.

Then comes the Bill to define and limit the powers of settlement officers with respect to the enhancement of rent. The Bill has been revised, and I think is in a form which will get rid of all the objections which were raised to the late Bill, and it will be shortly laid before the Council.

There are questions which have been raised in various parts of the country in connection with the Road Cess Act. No doubt that Act requires amendment, but the amendments which have been suggested are hardly

sufficiently definite to be put into the form of a Bill; but in the course of the winter I may have to ask the Council to consider these questions.

The only other measure which I propose to bring before the Council is a proposal which I am compelled to make, as I explained on Thursday last in the Council of the Governor-General, for a license tax on trades, dealings, and industries, in order that we may be in a position to meet a requisition to increase local taxation to such an extent as shall enable the local Government to pay the sum of thirty lakhs of rupees annually, in common with other provinces, to a fund which is to be raised by taxation throughout the whole of India for famine purposes. It is admitted by all, I think, that some such fund must be raised, and I hope no opposition will be advanced to the Bill. I have considered the subject with reference to local taxation generally; and of all the proposals made and schemes submitted from a number of sources, I see none which is likely to be so applicable to, and to fall so fairly on, the classes which pay the least to the revenue as a license tax on trades, dealings, and industries, the nature of which will be explained by my hon'ble friend Mr. Mackenzie, who will to-day ask for leave to introduce a Bill for that purpose."

AMENDMENT OF THE RENT LAW (CHOTA NAGPORE).

THE HON'BLE MR. REYNOLDS moved that the Bill to amend the procedure in suits between landlords and tenants in Chota Nagpore be read in Council.

He said that it would be in the recollection of the Council that leave to introduce this Bill had been given so long ago as November 1876. It was found, however, that the measure required to be carefully elaborated in communication with the local officers; and in the end it had proved impossible to get the Bill drafted in time to allow of its introduction during the last session. The Bill had now been drafted and was in the hands of hon'ble members; the details of it had been very carefully considered, and he believed it would be found that the measure in its present form was such as would commend itself to the approval of the Council, and would be likely to work in a satisfactory manner in the districts to which it was intended to apply.

In moving last year for leave to introduce this Bill, he had briefly referred to the special circumstances which made it desirable, and indeed necessary, that a separate rent law should be passed for Chota Nagpore. It would, however, be seen that it was proposed to restrict the operation of the Bill to the three districts of Lohardugga, Hazareebagh, and Singbhoom. It was not desired that the special legislation required for these districts should be extended to any part of the province which could safely be left to the operation of the ordinary law, and it was accordingly provided that the Bill should not extend to Manbhoom. The district of Manbhoom, both in the character of its population and in the nature of its local tenures, assimilated very closely to an ordinary Bengal district, and rent proceedings in it might very well be conducted under the ordinary law.

The President.

The condition of things in the other three districts was very different, and the necessity for a special law had been strongly urged upon the Government in 1875 by Colonel Dalton, whose intimate acquaintance with the province of Chota Nagpore was well known. The suggestion was approved by Sir Richard Temple in a Minute recorded by him, and the details of the measure were then discussed with the Board of Revenue and the local officers. He might mention in particular that the Government were specially indebted to the late Judicial Commissioner, Colonel Davies, and the present Judicial Commissioner, Mr. Oliphant, for some very valuable remarks and suggestions on the proposed legislation.

It appeared that in Chota Nagpore generally Act X of 1859 was recognized as the rent law in force. But in practice several important modifications had been made, which rested on no specific legal basis, but upon orders of the executive authorities. He did not at all mean to imply that there was anything illegal in these orders. The districts of Chota Nagpore, ever since the province was constituted as a separate administration under Regulation XIII of 1833, had always formed part of the non-regulation districts, or, as they were now termed, "scheduled districts;" and Act XIV of 1874 described these districts as territories which were not subject to the general Acts and Regulations. But it was one of the objects of that Act gradually to replace this undetermined state of things by the issue of notifications which should declare precisely what laws were and were not in force in each of the districts referred to. If this Bill should pass into law, the result would be that it would be notified as embodying the rent law for the three districts to which it applied, and Act X of 1859 would be similarly notified as containing the rent law in force in Manbhoom, unless, indeed, it should be thought desirable to bring the district of Manbhoom under the operation of Act VIII of 1869 of that Council.

Coming now to the special modifications of the rent law, which were found to exist in the districts to which the Bill applied, the first point to which he would ask the attention of the Council was with respect to the section of Act X of 1859, which referred to the right of occupancy. It did not appear that there was any special order making this section inoperative in Chota Nagpore. But, as a matter of fact, it was found that the right was never claimed, and that the ryots, or at least the great majority of them, were entirely in ignorance of its existence. This being the case, it had been a matter for consideration whether it was desirable legally to recognize this occupancy right. But there appeared to be no good reason for excluding the Chota Nagpore ryots from this privilege, and accordingly the section of the rent law relating to the right of occupancy had been substantially reproduced in section 6 of the Bill before the Council.

Admitting that occupancy rights were to be recognized, the next question was regarding the conditions under which the rent of an occupancy ryot might be enhanced. On this point there was an unanimous consensus of opinion that the conditions laid down in section 17 of Act X of 1859 were entirely

inapplicable to the special circumstances of the Chota Nagpore province. He need not trouble the Council with the details of the several points in which those conditions were inapplicable. The question was fully discussed in a note on the subject by Mr. Webster, who was well acquainted with the country, and was for some time manager of the Chota Nagpore estate. His opinion was acquiesced in by all the officers who were consulted. They said that the provisions of Act X of 1859 in respect of this matter could not be applied, and that some special procedure must be put in force; and this was provided by sections 21—24 of the present Bill.

The next question related to the power of distraint; and it was to be observed that in Chota Nagpore this power had never been recognized as a means of enforcing the payment of rent, and there was reason to apprehend that serious agrarian difficulties and complications might result if the levy of rent by that process were to be legally authorized. This point had been strongly insisted upon by Colonel Dalton, and it was also noticed in the Minute of Sir Richard Temple, and accordingly the provisions of Act X of 1859 relating to distraint had been omitted from the Bill. It might be thought that the absence of this power would involve some hardship to the zemindars, who were required to pay the Government revenue under the same penalties of sale as were in force in the regulation districts. But it would be found that this argument did not really apply to Chota Nagpore, in which the land revenue of the province was so lightly assessed, and bore so small a proportion to the rental, as to render it unnecessary that landholders should be vested with that summary power of distraint which was required in other districts.

The Bill further provided that the right to eject a non-occupancy ryot should not be exercised except under a decree of court. This provision was in accordance with the uniform practice of the province, and was declared by all the local officers to be a necessary provision.

The sections of the Bill which referred to the sale of property in executions of decrees had been wrongly quoted in the statement of objects and reasons; the reference should have been to sections 127, 131, and 132. It was provided by those sections that sales of landed property should be made only with the sanction of the Commissioner of the division, and this was in accordance with the practice at present in force. Indeed, if we looked to the history of the question, it might be doubted whether these sales should be allowed at all. These were really feudal tenures or fiefs, granted by the zemindar to a certain person and his heirs, with a reversion to the zemindar in the event of the failure of heirs of the grantee. They thus conveyed a qualified, and not an absolute, property; and it would have been reasonable to enact that the tenures themselves should not be sold, but only the rights and interests of the holders. It appeared, however, that sales of these tenures, subject to the sanction of the Commissioner, had been generally recognized, and it was thought that there would be some hardship in either declaring such sales invalid in the past, or in prohibiting them for the future. It was accordingly provided that sales of land in execution of decrees should be permitted, subject to the approval of the

The Hon'ble Mr. Reynolds.

Commissioner of the division; and the local officers agreed in recommending this procedure.

The provisions to which MR. REYNOLDS had referred were for the most part in limitation of the powers exercised by zemindars under the ordinary law. As some set-off to these, it was to be observed that section 34 of the Bill contained some special and rather stringent provisions for enforcing the registration of the transfers of under-tenures. These were intended for the protection of the zemindars in their rights as superior landlords, and the necessity for these provisions had been very strongly urged by the late Judicial Commissioner Colonel Davies.

MR. REYNOLDS did not think there were any other points in the Bill which demanded the special attention of the Council. It would doubtless be remembered that in passing a rent law for Chota Nagpore they were legislating for a territory the conditions of which differed in many important particulars from those of the Lower Provinces in general. In Chota Nagpore they had the peculiar phenomenon of a society which was not only of a very primitive and conservative type, but in which the landlords in general belonged to one race and the tenants to another. The zemindars were, or at least claimed to be, Rajpoots: the tenants were for the most part men of the aboriginal races. The present Bill was an attempt to hold the balance evenly and fairly between the interests of these two classes, and, as such, he desired to commend it to the favorable consideration of the Council.

With these remarks he begged to move that the Bill be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Baboo Isser Chunder Mitter, the Hon'ble Nawab Meer Mahomed Ali, and the Mover, with instructions to report in four weeks.

POWERS OF SETTLEMENT OFFICERS AS TO ENHANCEMENT OF RENT.

THE HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to define and limit the powers of settlement officers in respect to the enhancement of rent. He said that the necessity for legislation on this question was brought to the notice of Government in the course of the extensive settlement operations which had lately been undertaken in the district of Midnapore. These operations embraced the Government estate of Balarampore, and also the two large private estates of Jellamootah and Majnamootah, which were under temporary settlement, and which together comprised no less than twenty-one pergunnahs of the district.

The wording of Regulation VII of 1822 empowered settlement officers to determine the rate of rent to be paid by any cultivating ryot, whether he possessed a right of occupancy or not, if he did not hold a permanent and transferable interest in the land. But it had been held by the civil courts that when this determination of the rate of rent by a settlement officer involved, as it generally did involve, an enhancement of the rent previously paid, the

Regulation did not dispense with the necessity for serving a notice of enhancement, and that the ryot was just as much entitled to contest his liability to pay the enhanced rent fixed by a settlement officer, as he had to contest enhancements made by landlords under the ordinary law. And further, the Civil Court would not even accept any presumption that the rate fixed by a settlement officer was *primâ facie* fair and reasonable. The burden of proof was thrown on the party who claimed the enhanced rent, and the court reserved to itself the right to decide upon the correctness of the rate which the settlement officer had fixed.

If this was a correct interpretation of the law, he need not remind the Council that the condition of things in Bengal was very different from that in the North-Western Provinces. In the North-Western Provinces, under the Revenue Act XIX of 1873, a settlement officer had full power to determine the status of any ryot, and the rate of rent to be paid by him during the term of the settlement; and the decision of the settlement officer on these points was only liable to be reviewed by the superior revenue authorities, the civil courts being debarred from dealing with such questions. It had been suggested by the Board of Revenue that it would be desirable to assimilate the law in Bengal to that in the North-Western Provinces. But on consideration the Government thought that it was unnecessary to ask the Council to invest settlement officers with such extensive powers, involving the determination of questions of right and title which seemed rather to belong to the cognizance of the civil than of the revenue courts.

It would consequently be found that the object of the Bill was rather to define and limit, than in any way to extend, the powers of settlement officers. It seemed doubtful whether, under the wording of Regulation VII of 1822, a settlement officer, in enhancing the rent of an occupancy ryot, was limited by the conditions of section 17 of Act X of 1859. But the Bill proposed to declare that no ryot having a right of occupancy should be liable to enhancement of his rent, except in accordance with some one of the conditions specified in that section; and when that was done, it seemed fair and reasonable that it should be presumed that the rate of rent so fixed by a settlement officer was a proper rate, until the contrary should be shown to the satisfaction of the court; and that any ryot who desired to contest an enhancement of rent, should be required to do so within a reasonably moderate period, which the Bill proposed to fix at three months from the ryot's receiving notice to attend and sign the settlement jummabundee.

These were the provisions of the Bill. It was a short measure, and had been drafted, but had not yet been circulated, and therefore for the present MR. REYNOLDS would only ask for leave to introduce the Bill.

The motion was agreed to.

LICENSE TAX ON TRADES, DEALINGS, AND INDUSTRIES.

THE HON'BLE MR. MACKENZIE asked the President, under Rule VII of the Rules for the conduct of business, to grant him leave to move for permission to bring in a Bill for the licensing of arts, trades, and dealings in the provinces

subject to the Lieutenant-Governor of Bengal. On leave being given he said:—"Before describing to the Council the details of the proposed measure, I desire to explain, as briefly and clearly as I can, its origin and history, and the place which it is intended to occupy in our provincial finance. In doing this, I cannot altogether avoid reiterating statements that have been made elsewhere; but it is essential that the proceedings of this Council should be complete in themselves, and we have to examine things here from the view-point mainly of the local Government.

I must ask the Council, then, to recall to mind the beginning and objects of the policy of which this measure is the final outcome. In December 1870 the Supreme Government announced that imperial resources were no longer adequate to the growing wants of the country; that they had indeed ceased to be adequate even to existing and sanctioned demands. Local Governments, we were told, like leeches' daughters, sent up one constant cry of "give"—supporting their pleas by such admirable argument that the Government of India had fairly beggared itself in a vain endeavour to meet their wishes. That Government had now therefore placed these well-meaning prodigals upon a fixed allowance, and required them to supply their further wants otherwise than by inroads upon the parental purse. In official phraseology, it was determined "to enlarge the powers and responsibilities of local Governments in respect of the public expenditure," and to inaugurate a system of "local taxation for local purposes" throughout the various provinces of India.

The extent of the relief required by the Imperial Exchequer was at one time, it may be remembered, matter of very serious doubt. It was feared that nothing less than the equivalent of the income tax at $3\frac{1}{8}$ per cent. would satisfy imperial needs; that the services to be transferred to provincial management would be made over with grants reduced by that amount; and that new provincial taxation to that extent would have been necessary at the very outset of the scheme. Eventually, however, the control of seven great spending departments was made over to the Government of Bengal with an assignment about 7 per cent. less than the reduced budget allotments of 1870-71. We were at the same time warned—and the warning was then but little noticed—that fiscal misfortune, such as a failure of the opium revenue, or national disaster, such as war or famine, would involve a re-opening of the terms of these provincial contracts.

The Government of Bengal under these arrangements began the year 1871-72 with an apparent deficit of $8\frac{3}{4}$ lakhs of rupees, and Sir George Campbell hesitated long whether to pinch the departments or to tax the public. On the one hand were the facts, tempting to taxation, that Bengal was by far the richest province in India, by far the most lightly taxed, and by far the most backward in local improvements. On the other hand frowned the difficulties,—the entire absence of co-ordinated local agency, the vastness of the tracts and populations to be dealt with, the multiplicity of villages, and the paucity of towns. The difficulties were gross and palpable, and the Lieutenant-Governor shrank from facing them. Economy, and not taxation, was the policy adopted: and so stern (I had almost said, so Scotch) was the economy, so relentless the saving, that the first year of provincial finance wrung

from the imperial allotment an unexpected surplus of 14 lakhs of rupees. Doubtless this was in some degree eked out by windfalls and adjustments of account; but it had involved what was felt to be a partial paralysis in many important branches of administration—a paralysis most uncongenial to the temperament of him who ruled us, and never contemplated or desired by the Government of India. The reaction was speedy, complete, and necessary. New schemes and old services were clamant for funds, and it was impossible long to stifle the just demands of great departments. The money was distributed almost as soon as saved.

Nevertheless we were still able to avoid all fresh provincial taxation. The development of *local* taxation, properly so-called, had by this time begun to relieve our Exchequer of many new demands. Indeed it was Sir George Campbell's hope that the road cess in the country, and revised municipal arrangements in towns, would together blend into a system of local rating, which would make general taxation unnecessary for any ordinary ends. And although the Bengal Municipal Bill as passed bears only a remote resemblance to the Municipal Bill as originally framed, we can still say that, but for forces beyond our own control, the Government of Bengal would probably have continued solvent and saving, able to pay its honest way and reap a modest surplus, though perhaps it could never have undertaken many new and important works. This is clear from the fact that but for the scarcity of 1874 our balances at the close of the following year would have aggregated full 20 lakhs of rupees, notwithstanding all our outlay upon Burdwan fever, primary education, and subordinate executive establishments.

Famine, however, both here and elsewhere, has played havoc with higher finance than ours, and Bengal has to bear its share of the heavy burden that has fallen on the State at large. It is not for me to criticise the policy which the Imperial Government has under these circumstances adopted, for it commands, I believe, the approval of all thinking men. Here we have only to deal with facts, and to carry out loyally the policy of the Crown. There can, Sir, be no question as to the duty of a Provincial Government in a juncture of this kind. There should be no question as to the attitude of the provincial public. I am not myself disposed to speak evil of provincialism. I believe in the virtues of strong healthy local feeling. If men take no interest in what is nearest them, any interest they profess in things remote is mostly sham. But there are occasions when sympathies must take a wider range. We in Bengal may well be proud of our province, of its growing enlightenment, of its marvellous trade, and its advancing wealth. We *may* feel at times, like all elder sons, that the younger brethren get too many of the plums and less than their share of crust. But at a strait like this, we must rise to our position as the premier province of the Empire, and consider how much, and not how little, we can do to help the State. Then, duty done, we may for the rest, and on being occasionally overlooked, console ourselves with the thought—

> "How the best State to know? It is found out,
> Like the best woman, that least talked about."

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To meet all unremunerative expenditure out of income, and to establish a permanent surplus for the future—this was, in fewest words, the object kept in view in the Financial Statement of the 15th March. Leaving the question of *famine* for future consideration, the Government of India sought to obtain that surplus by a bold and threefold extension of the decentralization plan. The income of the empire was, in the first place, to be increased by transferring to provincial control certain great branches of improveable revenue; secondly, expenditure was still further to be checked by multiplying the services under provincial management; and lastly, those extraordinary works which serve a chiefly local end were in future to be maintained by local or provincial funds. Now this last change, to Bengal at least, meant new taxation. Suggestions as to the character of this taxation were authoritatively given us. We were advised to re-distribute the charges laid upon us, so as to adapt the burden locally to the benefits received. Compulsory local rating for canals was shown to satisfy this condition. Again, so far as general taxation might be required, expansion of existing cesses was declared preferable to new and unfamiliar imposts. This Council therefore, at its last session, was asked to consider a Bill for the imposition of a compulsory rate upon irrigable lands, and a Bill for the levy, through the road cess machinery, of a cess for the construction and maintenance of provincial public works. The last of these measures has become law, and imposes, chiefly on the agricultural and landed classes, an annual burden of some 30 lakhs of rupees. If the Irrigation Bill eventually passes, it too will affect only persons interested in lands, within certain limited areas.

So far the Government of India had only provided in a general way for a moderate improvement of departmental revenues, for a further check upon departmental expenditure, and for the charges on account of maintaining remunerative public works. The problem of providing financially against recurrent *famine* was, as I have said, reserved in March last for future consideration. The mode in which the Government of India proposes to meet this question has, within the last few days, been clearly explained to the public. We have here simply to accept the fact that Bengal must raise for the common weal a further subsidy of some 30 lakhs.

We cannot give this of our existing means. The public works cess will, for some years to come, at best do little more than meet the interest and working charges on existing railways and canals. It will certainly not enable us to meet the interest on the capital required for that complete and improved system of railway communications which Bengal still sadly needs. On the other hand, the margin of surplus to be earned by improving our revenues is as yet unknown, and will in any case come nowhere near the sum that I have named. Not only have we from this source to make good to the Supreme Government the assumed normal increment of our stamp and excise receipts, but we have to meet a further reduction of about 4 per cent. upon the already reduced allotments of 1871-72, besides a gross reduction of 1½ lakhs upon the allotments of two of the heads of service last made over to us. Again, it must always be remembered that no *great* reductions of expenditure are possible to the local Government if it does its duty properly. It may practice small

economies, re-distribute allotments, and avoid needless increase of expenditure, but it is bound to maintain provincial services on the lines laid down by higher authority. It can neither change the system nor starve the departments. To obtain the funds that we require, then, fresh taxation is our only standby.

We have been allowed considerable latitude of discussion with reference to its shape. So long as we did not attempt an income tax, or trench on imperial resources, we might probably have had any tax that suited us, though of course uniformity with other provinces was most desirable. At any rate we gave this question of the shape of the tax much consideration. All the canons of taxation laid down in the books, and all the canons of taxation deemed special to India, have been duly paraded and duly pondered. "Indirect taxation," say some, "is the only form of taxation suited to this country." This is one of the canons usually now-a-days deemed axiomatic. And indirect taxation is, I admit, in many respects a delightful mode of raising money. You take away a large percentage of a man's earnings, and he is not one whit the wiser, and (what is better still) never cares to ask about how you spend it. If only those who are so fond of enunciating the canon would go on to show us in detail how we, as a local Government, can raise 30 lakhs of rupees by indirect taxation, they would confer on us an inestimable benefit. To bring in the sum that we require such, a tax must be laid upon some article or articles of very extensive consumption. We cannot tax grain any more than air or drinking-water Salt it is beyond our province to touch. Sayer, in the shape of internal duties on commodities in general, we would not if we could revive. A tax on tobacco and pân is the only indirect tax properly so called that deserves serious consideration. But after careful scrutiny we (I speak here only for Bengal) have come to the old conclusion that, save perhaps by organizing a great imperial monopoly, no revenue of moment could be raised from tobacco, either by at ax on cultivation or a tax on sales, save at such a cost of collection, and with such an amount of prevention and interference with the people, as would make the tax a piece of sheer financial madness. From pân by itself only a trivial revenue could be had. (I need not weary the Council by discussing the question of a tobacco monopoly, though some go so far as to think that such a scheme might rehabilitate our Indian finance, and enable us in time, by improved manufacture and so on, to command the custom of all smoking Europe. The question is imperial, and the idea of a monopoly is not likely to find favor at home. Moreover, we want this money speedily, and arguments on principles take years to settle. Then, again, we are told that sumptuary and optional taxes are the best form of taxation. But to each and all of these is the objection that they would not be sufficiently productive in a country of poor men. A marriage tax in Bengal at any reasonable rates would probably yield not more than 4 or 5 lakhs of rupees, could only be worked through the police, and is open to various objections when affecting Mahomedans. The question of a succession duty was disposed of in the *Gazette of India* of the 8th February 1868. Taxes on footmen, powder, crests, and plate, are hardly feasible as yet, and their Indian equivalents would yield but little to the State. But it may be asked why not, by a combination of small

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sumptuary and indirect taxes, raise what you require? To this we reply that we know of no combination of unobjectionable taxes that would give us the money; and, after careful consideration, we have thought it best to avoid multifarious measures of taxation, and to raise the sum we want without distracting the same classes of the people by taxes of different kinds coming upon them at the same moment, even though some of these might appear to be either optional or indirect.

We require, to cover the famine subsidy with costs of collection, and to give a small margin for risk and trouble, something like 35 to 37 lakhs of rupees. We propose to raise this sum by a direct license tax upon arts, trades, and dealings. We can at present lay no further burden upon the land. We prefer rather to remove the invidious exemption that, since the repeal of the income tax, trade and commerce have enjoyed. Looking to the amounts raised from land under existing cesses, the demand now to be made upon industry and trade is not, we submit, excessive. The trade of Bengal is year by year receiving fresh developments. It has profited by the misfortunes of our own agriculturists. It benefits by every calamity in neighbouring provinces. It shares in the improving condition of both peasant and landowner, but contributes less than either of them to the Exchequer of the State. The import and export trade of this Presidency, excluding Government transactions, was, in 1876-77, 17·43 per cent. greater than in the year preceding. The gross exports alone were 26 per cent. in excess of those of 1875-76. The trader is everywhere, as Mr. Massey once remarked, though a valuable, still a very expensive, member of the community. To enable him to carry on his business large sums are spent in public works. It is he who benefits most by good police and all the paraphernalia of protective administration. In Europe, traders were the earliest class subjected to special tax. In India, direct taxes upon trade were a normal feature under native rule, are consonant with both Hindu and Mahomedan law and practice, and have been common under our own legislation, both local and imperial. But at present, with the exception of his individual share of the duty on salt, and his individual share of the import duties on articles consumed by him, the trader and the artizan in Bengal pay nothing to the public Exchequer for the benefits they enjoy. We propose to remedy this anomaly.

The Lieutenant-Governor has explained elsewhere why the tax we now propose is not upon the model of those of 1867 and 1868. By no possibility could we raise the sum required by any reasonable rate of tax upon trade incomes of Rs. 200 and upwards, such as Mr. Massey's license tax and certificate tax affected. A country where, though the craving for land is as strong as in Ireland, 80 per cent. of the suits about real property are valued at less than Rs. 100, is not a country with many wealthy men. It is a mere truism to say that any tax in India, to be largely productive, must go down in some way or other to the masses, and be adapted to the general circumstances of those who form these masses. It's "mony a mickle that mak's the muckle" in Indian finance, and we feel the less hesitation in taxing the petty trader and the artizan, because we see every ryot in the country contributing to cesses according to his rental.

There are, according to the census, about 4 millions of adults carrying on arts, trades, and dealings other than agricultural throughout Bengal. We assume that probably one-fourth of these will be able to pay tax, and we propose to levy on them a light general license tax at rates ranging from Re. 1 to Rs. 200 annually. We have sought to grade the tax for Bengal so as to make anything like minute perquisition into income or profits unnecessary. Local officers should, for instance, have no difficulty in settling whether a man should pay Rs. 32 or Rs. 100: whether he should pay Rs. 10 or Rs. 32. The most general knowledge of a trader's style and means will enable the Collector to grade him according to those rates. We may by our rules prescribe that the Collector's general aim should be so to classify as not to impose upon incomes, so far as known or proved, more than a certain percentage of tax; but nothing of the nature of an income tax is at all intended. The highest fee of all (Rs. 200) will be paid only by certain specified wholesale traders, bankers, companies, and the like. Substantial retail traders will pay Rs. 100, Rs. 32, or Rs. 10, according to class. In the lower grades the normal rate of tax will be settled by considerations of locality. In first class municipalities Rs. 4, in smaller towns and unions Rs. 2, and in mofussil villages Re. 1, will be the normal rates. But Collectors will have power to make a well-to-do man pay Rs. 4 or Rs. 2 wherever he may be found, and to reduce or remit the rates in cases where poverty makes the normal tax unduly heavy. We have tried, however, to leave as little as possible in the power of assessors. We propose also, in framing the lists of licensees, to make as much use as we can of existing local agencies, such as municipalities and union punchayets. These already possess lists of individuals residing within their limits, and can, with proper supervision, easily do the work of selection and classification. The Council will consider whether village punchayets under Bengal Act VI of 1870 can be similarly used. The Bill, as framed, assumes that they can. In the work of collection we propose again to make use of municipal and union machinery, making it worth while for those agencies to act as our collectors. For the rest of the country Government must provide an agency, and I will only say that it will be our object in all arrangements to reduce to a minimum the harassment of individuals by providing for collection at local centres and for strict supervision of the subordinate agency. The tax is in its nature so simple that it is hoped all liable to it will easily understand their obligations, and thus anything like illegal exaction be next to impossible. I attach much importance in this connection to the fact that the tax will be paid in one annual instalment. If any licensee cannot possibly pay up the tax to which he is assessed in one sum, he will have a claim to be put in a lower grade. If a man cannot possibly pay one rupee he ought not to be taxed at all. There will be no half-yearly, quarterly, or monthly dunnings. The tax is not, it will be seen, a tax upon households, firms, or partnerships, but upon individuals. Any other arrangement would in the interior give rise to endless disputes as to liabilities. But we shall lay down rules for reducing the gross assessment of a family when its members are living and working together. Our object in all our proposals has been to minimise as far as possible the ordinary evils of

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direct taxation. We are not without hope that we have to some extent succeeded.

In conformity with the principle of avoiding multifarious imposts, those persons who pay license tax will be relieved of the house cess which they now pay under the Road Cess and Public Works Cess Acts. This will be recognised in the mofussil as a very substantial boon. That the house cess is a thoroughly unpopular tax is, I believe, beyond doubt. The disputes as to liability and as to correctness of valuation, the claims to exemption, the constant changes in the lists from death and desertion, the inefficiency of the collecting machinery, and the repeated periodical demands, all combine to make the exaction hateful to both Collectors and Assessees. It would realize at best but about 1½ lakhs per annum, and the collections are always persistently in arrear. Its abolition should alone reconcile the mofussil trader to this license tax.

The arrangements proposed for Calcutta are in some degree special, in order to work the tax upon existing lines and avoid conflicting demands. Briefly, we adopt the third schedule of the Calcutta Municipal Act, under which a license tax is already levied on professions, trades, and callings; raising the rates for a few of the wealthier trades to those proposed for the mofussil; and tacking on at the bottom the arts and industries not at present touched by the Calcutta schedule. We have not excluded the few professions that are in Calcutta affected by the present schedule. They are flourishing and well-to-do, and have shared in the special prosperity of Calcutta as a town. Generally, however, and in the interior, we do not intend to tax professions, or those earning their living by service on fixed salaries. These classes suffer from the undoubted rise of prices without being able to recoup themselves, and the Europeans among them have been specially mulcted by the fall in exchange. But our main reason for excluding them is that we are not proposing an income tax upon all classes, but an ordinary trade license tax for a specific purpose.

We estimate the proceeds of the license tax at from 35 to 37 lakhs of rupees. It may bring less; it may bring more. Experience only can show. The number of taxable persons is at present to a great extent matter of conjecture. The Government will regulate the demand hereafter by the results of the first year's working. If it turns out to be very productive, we may be able to remit other forms of taxation, and we can always utilize any unappropriated balance for provincial improvements.

This, then, is the Bill which we have to submit to the Council. That it will be received by the country at large with acclamation, or that it is beyond all reach of criticism, we do not expect.

> "He that expects a faultless tax to see,
> Expects what never was, nor is, nor e'er shall be!"

The Government is fully sensible of the difficulty of the task before it, but it believes that the measure is difficult rather from its magnitude than by its intricacy; and we are encouraged to go on by the opinion of the most experienced officers, both now and when a similar measure was proposed in Act XVIII of 1861, that a tax of the kind is feasible even in Bengal. The Government relies

upon the energy and devotion of its officers to bring about in the end a successful issue. It relies at the same time upon the loyalty and intelligence—shall I not say, the patriotism—of the people of Bengal. These taxes are not required by us to bolster up unholy war, or carry carnage through a neighbour's land. We do not wring from toil its tribute to satisfy a sovereign's lust, or raise in far off capitals memorials of conquest. We seek to save the lives and not to filch the earnings of the poor, and we demand from the people of Bengal the means of warding from their doors that famine spectre that has slain already so many of their brethren, and may, for aught we know, be knocking at their own homes in the early future. Whether our object will be understood by all we cannot tell. But we do trust that educated natives, by their speech and by their writings, will lead their countrymen to the truth in this important matter, and rise superior to paltry cavil, recognising the urgency and greatness of the need. But whatever be the view taken by the people as a whole, the sympathies and aid of this Council will not be wanting to the head of this Government, into whose hands was put but yesterday what (if I may quote Carlyle) "seemed to be the rudder of Government, but has for the present turned out rather the spigot of taxation, wherewith he must tap, and the more cunningly the nearer the lees."

With these remarks I beg to move for leave to bring in the Bill.

The motion was agreed to.

EMIGRATION TO CHITTAGONG AND THE CHITTA HILL TRACTS.

THE HON'BLE MR. MACKENZIE moved that in the list of Select Committees his name might be substituted for that of the Hon'ble Mr. Bell as member in charge of the Bill to extend the Labor Districts Emigration Act, 1873, to the district of Chittagong and to the Chittagong Hill Tracts, and that the Hon'ble Mr. Brown be added to the Committee.

The motion was agreed to.

The Council adjourned to Saturday, the 5th January 1878.

Saturday, the 5th January 1878.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble G. C. Paul, *Acting Advocate-General*,
The Hon'ble H. J. Reynolds,
The Hon'ble A. Mackenzie,
The Hon'ble S. C. Bayley,
The Hon'ble H. T. Prinsep,
The Hon'ble Baboo Ramshunker Sen, Rai Bahadoor,
The Hon'ble Baboo Isser Chunder Mitter, Rai Bahadoor,
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor,
The Hon'ble Nawab Meer Mahomed Ali,
The Hon'ble H. F. Brown,
The Hon'ble Rajah Pramatha Natha Roy, Bahadoor,
and
The Hon'ble F. Jennings.

POWERS OF SETTLEMENT OFFICERS AS TO ENHANCEMENT OF RENT.

The Hon'ble Mr. Reynolds moved that the Bill to define and limit the powers of settlement officers in respect to the enhancement of rent be read in Council. He said, in moving that the Bill be read, it would not be necessary to add very much to what he said at the last meeting of the Council when asking for leave to introduce the Bill. The Bill was a short and simple measure, and hon'ble members could easily satisfy themselves that it was framed in accordance with the outlines which he had sketched on the previous occasion. The object of limiting the powers of settlement officers was effected by section 2, which provided that no settlement officer should enhance the rent of any ryot who had a right of occupancy, except on some one of the grounds prescribed in the rent law; in other words, in the cases in which landlords themselves might enhance. But when this had been done, and when the registers had been confirmed by the superior revenue authorities, it seemed only reasonable that the rate of rent fixed by the settlement officers should be presumed correct until the contrary was shown to the satisfaction of the civil court; and that, if a ryot desired to contest the proceedings of the settlement officer, he should be required to do it within a reasonable period of time. Mr. Reynolds did not think he need detain the Council any further.

The Hon'ble Baboo Kristodas Pal said, in supporting this Bill he wished to make one or two suggestions. The object of the Bill was to reduce litigation, and he thought that the provisions of the Bill might fitly be extended to wards' estates and attached estates in the hands of Government, inasmuch as these estates were practically administered by the Collector during the minority of the ward or during attachment. He would also suggest that where

the zemindar should be willing to avail himself of the agency of the revenue authorities in making settlement, he should be allowed the benefit of such agency provided he paid the cost. In all these cases the right of the ryot to contest the decision of the settlement officer in the civil court should of course be allowed. If the principle of the Bill were extended in this general way, BABOO KRISTODASS PAL thought it would help greatly to reduce litigation between landlord and tenant, and relieve the civil courts to a considerable extent. He threw out these hints for the consideration of hon'ble members and of the Select Committee to whom the Bill would be referred.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Prinsep, the Hon'ble Baboo Ram Shunker Sen, and the Mover, with instructions to report in two weeks.

LICENSE TAX ON TRADES, DEALINGS, AND INDUSTRIES.

THE HON'BLE MR. MACKENZIE said that in moving that this Bill be read in Council he had but little to add to the lengthy statement that tired the patience of the Council at its last meeting. On that occasion, although the Bill was not formally introduced, he was able to place in the hands of hon'ble members a proof copy of its provisions. In the Bill as now before Council, some few alterations have been made to which he might be permitted briefly to refer.

In the first place the title and phraseology of the Bill had been slightly modified, so as to show more clearly the intent and incidence of the taxation proposed. Instead of a tax upon "arts, trades, and dealings," the wording would be in future a tax upon "trades, dealings, and industries." He need hardly say that this modification involved no change of plan. Government used the word "arts" originally in the simple sense of *métier*, and not with any reference to the fine arts (if such there were in India), the art of medicine, the art of making the worse appear the better reason, or other arts of the nature of professions. But to avoid any misunderstanding, they had amended the phrase to one about which no doubt could arise.

Then, again, some of his native friends, with keen prevision of possible abuses, had expressed a fear lest, under the Bill as it stood, some zealous canoongo or heartless sub-deputy should seize and tax those poverty-stricken old ladies who lived by peddling odds and ends at country markets. Government had no desire to tax these dames or any others, male or female, who were similarly afflicted and distressed in worldly estate. Accordingly they had inserted a provision that the tax should not be more than two per cent. upon the earnings of any one brought under it. The lowest rate of tax being one rupee, hon'ble members would see that all incomes of less than fifty rupees would thus be able to claim exemption.

This introduction of the principle of percentage was, it would be observed, not a surreptitious recurrence to the close assessments of the income-tax, but merely the provision of an ultimate standard to which the assessee, *and he only*, might appeal if he disputed the rough classification of the Collector. It might be desirable, however, with reference to this change, to revise the rates of tax proposed in the schedule, so as to assimilate them more closely to some

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of the rates in the Bills now before the Supreme Council. The local Government did not propose to abandon their own principle of widely distinct grades, but perhaps instead of Rs. 100, Rs. 32, Rs. 10, and Rs. 4, they might take Rs. 100, Rs. 50, Rs. 15, and Rs. 5, rates affecting respectively incomes of and over Rs. 5,000, Rs. 2,500, Rs. 750, and Rs. 250 per annum.

To discourage more positively all inquisitorial procedure, they had adopted also the proviso of the North-Western Provinces Bill that no evidence should ever be called for by the Collector save at the instance of a petitioner, or in order to test facts alleged by an objector to the Collector's assessment.

Lastly, they had both in the preamble and in the section regarding the disposal of the proceeds of the tax made it clear that the object of the measure was to enable provincial resources to meet charges incurred, or to be incurred, here or elsewhere, on account of famine.

With these remarks he begged to move that the Bill be now read in Council.

The Hon'ble Baboo Kristodas Pal said, he believed he spoke the sense of the Council when he said that they felt greatly beholden to the hon'ble mover of the Bill for his able, elaborate, and eloquent exposition of the circumstances which had led to the proposed measure. There could not be a single member of this Council who was not fully alive to the gravity of the present crisis, to the sacredness of the cause which the Government had advanced for raising fresh taxes, and to the obligation resting upon himself, as upon the community at large, to assist the Government in the discharge of this difficult and disagreeable task. The Government of India had performed a noble work; and whatever differences of opinion might exist as to details, there could be but one opinion as to the humane and benevolent motive which actuated it in throwing open the national treasury for the salvation of the lives of the famine-stricken millions, the devotion and self-sacrifice with which His Excellency the Viceroy headed the famine campaign when it was at its worst, and the indefatigable industry and uncomplaining patience and perseverance with which one and all engaged in this mission of mercy had fulfilled their appointed duties. The people of India felt profoundly grateful to the British Government and to the great British nation, which had manifested its sympathy with the suffering subjects of the Queen in India by a spontaneous outburst of national charity, the like of which was not known in history. Remembering these circumstances, there could hardly be any section of the Indian community which would not cheerfully bear its legitimate burdens to meet the vast expenditure which had been incurred in coping with this national calamity.

There were, as the Hon'ble the Finance Minister said elsewhere, two courses open to Government for meeting the famine expenditure—by reducing expenditure, or by raising fresh taxes. Baboo Kristodas Pal was one of those who thought that the first was perfectly feasible, but it required time, consideration, and determination. His Honor the President lately indicated in another place the directions in which economy might be justly and safely enforced; and so long as there was the slightest room for retrenchment, the

Government would not be true to itself, to the millions whose destinies had been committed by a beneficent Providence to its charge, and to the Crown which it represented, to let slip any opportunity for effecting it. A penny taken from the people, where it could be saved, was, he respectfully submitted, a penny taken wrongfully. But, as he had said, economy, though perfectly feasible, could not be effected in a day, and in the meantime money must be had. Additional taxation had thus become inevitable. But it would have been gratifying to the people if the Government, while laying new burdens upon them, had given them an assurance that they would be temporary—that they would be remitted say at the end of three or four years, when the necessary retrenchments had been made. If the rules of this Council would permit him, he would suggest that the Council, while recognizing its duty to respond to the call of the Government of India to provide means for additional revenue, should urge upon it with due emphasis the imperative necessity of enforcing economy wherever practicable in justice to the tax-payers.

He now turned to the proposed scheme of taxation and the mode of its application. He at once admitted that the trading and professional classes did not contribute to the necessities of the State in proportion to their means or to the benefits which they had derived from British rule. He had, he confessed, a repugnance to direct taxation in this country, because, as he humbly conceived, it was not suited to its circumstances; but he could not deny that he could not think of any mode of indirect taxation by which the trading and professional classes could be successfully reached and the revenue would be productive.

As regarded the Bill before the Council, he must, in justice to the hon'ble member in charge of it, say that it had been prepared with great care, and that its leading object had been to produce a maximum of revenue with a minimum of oppression. Although the hon'ble member had informed the Council at the outset that the Government of India was not disposed to sanction an income-tax, the proposed license-tax was to all intents and purposes a rough income-tax. It was true that there would not be that inquisitorial inquiry incidental to assessments under an income-tax, but the schedule had been so devised that a Collector in assessing persons must have regard to the earnings of the assessee. In fact, in the revised Bill which had been circulated, a section had been introduced with a view to prevent abuse of power, providing that no person should be assessed at a higher rate than 2 per cent. upon his earnings. So, however we might frame a license-tax, it could not but have the appearance and the character of a rough income-tax; and if there was to be an income-tax in some form or other, perhaps it would have been better to have it in the right form. He could not deny that the schedule as framed distributed the incidence of taxation very unequally. The maximum figure was Rs. 200, which at the rate of 2 per cent. covered incomes of Rs. 10,000 annually. Now, all persons having profits or earnings from any trades, dealings, or industries above Rs. 10,000 would pay Rs. 200 annually; so that the higher classes of merchants, bankers, and mahajans would be assessed at an almost nominal sum On the other hand, on coming down to the minimum, we found that any person who had an income of Rs. 50 per annum, or a little over Rs. 4 per mensem, would be assessed with a 2 per cent.

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tax, although the amount he would have to pay—one rupee—would be very small. Now a person with Rs. 4 per month barely lived from hand to mouth. In fact, his existence was a struggle, and yet he would be called upon to pay one rupee per annum; while all persons who earned from any trade or dealing more than Rs. 10,000 per annum would be liable to pay Rs. 200 per annum, which became less and less in proportion to their incomes as the amount of incomes increased. He for one was of opinion that in order to be just to the poorer classes of persons who would come under the Bill, the maximum should at any rate be raised to Rs. 500, which was the maximum amount of the license-tax of Mr. Massey in 1867.

Then he would suggest a revision of the schedule. The hon'ble member in charge of the Bill had anticipated him in saying that the gaps in the grades or classes were too wide. For instance, from Rs. 32 to 100. Well, an assessment of 2 per cent. upon an earning or income of Rs. 5,000 per annum would give Rs. 100 as the amount of the tax. On the other hand, an income of Rs. 1,600 per annum would carry, under class 3, Rs. 32, all incomes or earnings between Rs. 5,000 and Rs. 1,600 being rated at Rs. 100 as the schedule stood. This gap, he took it, was very wide. It would press very severely upon a very large class of people whose earnings fell within this limit. The same remarks applied to class 4, the fee of which was given at Rs. 10. A fee of Rs. 10 would cover an income of Rs. 500, and a fee of Rs. 32 would cover an income of Rs. 1,600; so that all incomes between Rs. 1,600 and Rs. 500 would be covered by a fee of Rs. 32. The gap here again was very wide. In fact, the practical effect of the schedule as it stood would be that earnings of the humbler classes of traders and dealers would be subject to a much heavier duty than those of first class merchants, bankers, and mahajans. This was an inequality which he was sure the hon'ble member in charge of the Bill did not contemplate, and which, Baboo Kristodas Pal hoped, would be remedied in Select Committee. He was aware that this inequality could not be wholly removed under any scheme of a license-tax, for the incidence would not be in proportion to the amount of incomes; but so far as it might be practicable it ought to be redressed.

He next turned to the mode of assessment. In the first place the Collector was required to prepare lists of all persons liable to the tax. The Collector would be assisted by municipalities and chowkidari unions in the preparation of these lists. The Collector would have the power of compelling municipal committees and unions to furnish him with returns. He might adopt these returns or he might not. Where the agency of the municipality or chowkidari union was not available, the Collector might employ his own agency to prepare these lists. He would then publish these lists, or cause so much of the lists to be published in certain villages as might be necessary, and if a person within 30 days did not file an objection, the assessment entered in the list should be considered final. If any assessee objected the Collector would decide, but it was not stated whether the objection was to be on plain or on stamped paper. No appeal was to be allowed from the decision of the Collector. The system, so far as he could judge, was simple and speedy; but he thought it would give greater satisfaction to the people if provision were

made, in some form or another, for an appeal. Under Mr. Massey's license-tax an appeal was allowed from the decision of the Collector to the Commissioner of Revenue. It struck him that the circumstances with which they had to deal would not admit of an appeal to the Commissioner in all cases; for if it was made obligatory on the Commissioner to hear appeals from assessments in all cases, he was afraid that that officer would not find time for other work. But as the Bill provided that municipalities were to prepare returns for the Collector, might not the object be attained by allowing the objector to file his objections, in the first instance, before the Municipal Commissioners or a bench of Commissioners, and if he was dissatisfied with their decision, he might be allowed to appeal to the Collector? One appeal BABOO KRISTODAS PAL thought would be desirable for many reasons. In the first place, if it was the District Collector who was to do all the work with his own hands, it would be a different thing altogether; but as the Bill provided, and as it might be well imagined, the District Collector could not have the necessary time for the performance of the details of the work; the details would necessarily devolve upon the Deputy Collector, or some other subordinate officer whom the Collector might nominate. Now, the Deputy or the Sub-Deputy Collector might be very naturally desirous of showing as good a financial return as he could, and in his zeal for revenue he might be led to sacrifice justice. But if an appeal was allowed from the decision of the assessing officer to the District Collector, there would be less room for injustice. Even in Calcutta, under a vigilant public press, and with a public which was well able to take care of itself,—even here, he said, an appeal was allowed from the assessment of the Chairman in license cases to a bench of Commissioners; and if there was necessity for an appeal in a place like Calcutta, such necessity certainly existed in a much greater degree in the mofussil. He had incidentally alluded to the question of stamps, and he was not unaware that this Council had no power to interfere with the stamp duty; but he submitted it would be exceedingly hard if an objector, who was assessed under the last class at Re. 1, or under class 6 at Rs. 2, was made to file his application on a stamped paper of eight annas. Perhaps the Government of India would not refuse to consider this matter if a proper representation was made on the subject by the local Government.

He then found that sections 25 and 27, particularly the former, provided for a sort of *hukamnamah* to municipalities to pay in the full amount of the tax whether realized or not. It did not say that the amount of the tax as realized should be paid into the Collectorate, but that within a certain time a certain amount must be paid in, and if it was not paid in, under section 27 Government would have the power of deducting the amount from any fund or funds standing at the credit of the municipality. Now such a provision, he was afraid, would hamper the action of municipalities. They were charged with the duty of preparing lists, then of making assessments, then of collection, and even if the full amount was not collected, they would have to make it good. And what was the consideration they would receive? Not even the expenses incurred in realizing the tax: for if he understood section 27 aright,

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it provided that the Commissioner and Magistrate might appropriate any sum the municipality might have at its credit to defray any sum leviable from it under section 25. He did not clearly understand this part of the section, whether it meant that the municipal revenues might be applied to the payment of the tax, realized or not, or whether the same might be appropriated to the defrayal of the cost of assessment and collection, if any. He thought that municipalities ought to be allowed the necessary charges for assessment and collection of the tax, and that they should be required to pay in the amount of the tax as realized, and not whether realized or not.

Then he turned to the schedule for Calcutta. He was afraid that the imposition of this tax on persons engaged in trades and professions, particularly on persons coming under the lower grades, would press very severely on them. If it were open to him, he would suggest that the lower classes in this schedule should be knocked off, so that only the richer class should be made to pay. He knew from his own experience, both as a Municipal Commissioner and as an Honorary Magistrate, that the license-tax did press very heavily on the poorer classes of traders in this town, particularly the occupiers of stalls in markets and itinerant dealers, and other persons in that position. But the Calcutta schedule suggested another consideration. In this schedule persons who were usually denominated as professional persons were included within the scope of taxation; for instance, barristers, attorneys, pleaders, physicians, and the like. Now, if it was consistent with the object of the Bill to include these professional persons within the scope of taxation, he did not see any reason why the same principle should not be extended to persons pursuing professional avocations outside Calcutta, in mofussil towns and stations. If any class of the community had thriven more than another under British rule, it was, he must confess, the legal profession, and he could not see any reason why a pleader of the High Court should be taxed, and the pleader of the district or subordinate Court should not be taxed. If it was the duty of the community to bear the charges of meeting the famine expenditure which had been lately incurred, or which might be hereafter incurred, he thought those classes which were able to bear the charge most easily, such as the legal and medical professions, which had prospered most under British rule, should be called upon to pay.

The last point was the mode of application of the revenue, which would be raised under the Bill. His friend the hon'ble mover of the Bill had last week told the Council that this measure was the final outcome of the policy of decentralization which was inaugurated in 1870. Baboo Kristodas Pal understood the policy of decentralization to be that the local Government should have the liberty to apply its own resources to the benefit of its own province. This Council had some discussion on this point last year when the Public Works Cess Bill was before it. He then took the liberty to point out to the Council the great injustice which had been done to Bengal from the early connection of the British Government with it, inasmuch as the revenues of Bengal had been to a great extent applied to the benefit of other provinces, and local works of permanent utility and local improvements had been absolutely starved.

His Honor the President was then pleased to point out that whatever might have been the policy in the past, it would be changed in the future; that if Bengal had been the milch-cow before, it would now be allowed to use its own milk; and on that ground the Council was asked to agree to the Provincial Public Works Cess Bill, because the principle of the Bill was that the revenue derived from it would be applied to works which were in existence, or which might be constructed within the territories subject to His Honor's government. BABOO KRISTODAS PAL could understand the object of that Bill so far. But in this Bill it was expressly provided that the revenue derived under it might be applied at the discretion of the Governor-General in Council either to famine purposes connected with these provinces, or with the other provinces of British India. Now, he respectfully and humbly contended that that was not carrying out the policy of decentralization in the spirit in which it had been promulgated, and in the way in which it had been hitherto understood, and in which it had been interpreted in this Council last year. It might be said that the famine expenditure of 1877 was fairly chargeable to the whole empire, and that Bengal as a part of the empire ought to bear a portion of that expenditure. He bowed to that opinion. But what was the amount of the famine expenditure? The total expenditure on account of the Bombay and Madras famine came to about 9¼ millions sterling, and if that amount were to be raised by means of a loan, the interest-charge upon it would not exceed 40 lakhs of rupees; and if Bengal were called upon to bear a fair proportion of this charge, its share would be considerably less than the revenue to be derived under this Bill. The Government of India had been pleased to remit two annas in the salt duty in Bengal. His Honor had rightly pointed out that this sacrifice of revenue was a concession to sentiment. In Bengal they did not in the slightest degree feel the pressure of the salt duty, but a two-anna remission of the salt duty involved a sacrifice of about ten lakhs of rupees per annum, and the relief per head would scarcely come to one pice per annum. Now, if the Government of India had transferred these two annas to the local Government, perhaps the proceeds would cover Bengal's quota for interest-charge. But let that pass. He found from the statement made by the hon'ble member in charge of the Bill that the produce of the license-tax would be somewhere about 40 lakhs of rupees. Even if they had paid ten lakhs of rupees as their quota for interest, there would be to their credit 30 lakhs of rupees; and if they applied this surplus to purposes which would benefit them, the tax-payers would have some satisfaction But the Bill provided that the Governor-General in Council might apply the revenue to the benefit of any other province. Where then, he asked, was that local freedom, that local self-reliance, on pretext of which they were asked to impose these local taxes? Within the last seven years Bengal had been burdened with a local taxation of about a million sterling. The road cess, the provincial public works cess, and the present license-tax would yield in the aggregate about a million a year, and all this heavy taxation had been imposed on the assumption that Bengal alone would benefit by this system of taxation. In fact, when His Grace the Duke of Argyll sanctioned the present scheme of local taxation for Bengal in his road cess despatch, he remarked

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that he sanctioned it because he hoped that the benefits to be derived would be direct, immediate, and palpable. But the tendency of this taxation had been simply (he spoke under correction) to relieve the Imperial Exchequer. Roads in Bengal were hitherto maintained from Imperial Funds, and they were now for the most part maintained from the Road Cess Fund; railways and canals were hitherto maintained from Imperial Funds, now they were to be maintained from the Provincial Public Works Cess Fund; and now that another heavy tax was to be imposed, although no works were specified for the application of the tax, they were told that the revenue might be applied just as the Governor-General in Council might think fit. He admitted that in financial matters this Council had no independence; that it must carry out the orders of the Government of India on that subject. But if the Government wished to be consistent in its policy of provincial finance, he thought they had every right to ask it to allow them to spend the revenue for the benefit of their own province. He did not think that the members of the Council would accept the position that they sat there simply to register the decrees of the Government of India for the imposition of taxes, without satisfying the people that the taxes proposed to be levied from them would be applied to their benefit. He would therefore suggest that due provision be made in this Bill, that after paying whatever sum the Government of India might call upon Bengal to pay as fair and equitable for the interest-charge on account of the famine loan, the surplus might be applied to works or purposes which might be considered needful as an insurance against famine in Bengal.

His Honor the President said that the cordial support which had been given to the principle of this Bill by his hon'ble friend who had just spoken was precisely of that character which he should have expected from him as representing the educated opinion of Bengal. But, when dealing with the details of the measure, he seemed rather to have departed from his original approval of that principle. His Honor did not propose to follow the hon'ble member in all his remarks on the Bill, because the bulk of them related to questions of detail which would have to be considered by the Select Committee of which His Honor hoped his hon'ble friend would consent to be a member. He felt sure that the Committee would give their fullest consideration to any suggestions in reference to the framing of the schedule, to returns, and to the mode of assessment which the hon'ble member might bring before them. But there was more than one point just raised which really affected the principle of the Bill rather than its details. The hon'ble gentleman objected to the Bill on the ground that it partook of the nature of an income tax. Having done that, he proceeded to criticise it practically on the ground that it was not an income tax, and complained of the very steps which Government had taken to prevent its having any appearance of being an income tax as being the weak points of the measure. Take for instance the first class in the schedule, the maximum of which was a tax of Rs. 200, his hon'ble friend objected to that as being an inadequate assessment on the incomes of the richer classes of merchants, and proposed to fix a rate of Rs. 500. Originally the Government had intended to fix a rate of Rs. 500, and even at one time thought of fixing the maximum at Rs. 1,000.

But they rejected it, because they wished to avoid anything which had the slightest appearance of an assessment upon income, involving any inquiry or analysis of a man's profits, though of course the schedule was a very rough form of assessments upon incomes to the extent to which it went; but it was so graded that men could be assessed by one class or the other of the graduated scale without any sort of inquisition. In addition to this, it was found that this higher scale of assessment of Rs. 500 would produce an infinitesimal amount of revenue compared to the revenue which was expected from the lower grades, and would be open to all the objections to inquisitorial proceedings which the hon'ble member raised to an income tax. HIS HONOR was very much surprised to find how little they should get by raising the highest grade from Rs. 200 to Rs. 500, and how very much less they would derive from a grade above Rs 500. He had not got the figures before him, but he believed his hon'ble friend Mr. Mackenzie would be able to satisfy the Committee that the amount to be obtained in this way would be quite insufficient to warrant such a heavy increase of the rate which would cause great dissatisfaction, and must also lead to much annoyance in investigating the incomes of merchants and others. Practically, as he had already said, his hon'ble friend's objection amounted to this, that the schedule was not an income tax rather than that it was.

Then HIS HONOR would allude to another point which had been referred to, namely, the mode of assessing the license tax in Calcutta and in municipalities generally. His hon'ble friend argued that some allowance should be given to municipalities, on the ground of the expense to which they would be put by the cost of collection, and that it was unfair to them to provide that a certain sum of money should be taken from them without giving them time to collect it. HIS HONOR thought his hon'ble friend misunderstood what was proposed to be done. What they proposed to do with municipalities was very much the same as what the Government of India proposed to do with the several Provincial Governments. They proposed to fix a certain amount which a municipality should have to pay, that sum being very much within what it could collect, and to give it the whole benefit of any sum which it might collect in excess of the minimum sum on which the contract would be based. The sum to be fixed would be a matter of detail, and it would be fixed in concurrence with the municipality itself. So far from having any desire to be hard upon municipalities, they would leave them some little margin of profit for performing those duties on behalf of the Government

Then as to the question of taxing professions in Calcutta, HIS HONOR thought his hon'ble friend had hardly considered how very few professional men there were with really large incomes outside of Calcutta. Naturally in the centre of commerce and the neighbourhood of the High Court of the country there was a collection of the most busy professional men. But he thought the hon'ble member could hardly believe that pleaders living in mofussil stations were in the same position as pleaders of the High Court in Calcutta. Besides that, these pleaders were already about to be taxed rather severely in connection with the

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proposed new Stamp Act, and he thought this was hardly the time to apply to them a fresh license tax, in addition to the heavy tax proposed to be imposed upon them under the new Stamp Act. He believed that professional men in Calcutta would be perfectly willing to bear their share of the taxation which was thrown upon the country, and that they would recognise the moderation which had actuated the Government in proposing to secure the amount required in the shape of a very moderate license tax, rather than throwing an income tax upon the whole of the population of the country. The tax was simply an extension of a tax they had all along been paying.

Then as to the question of the mode of application of the money, he believed it was the intention of the Government of India, although he was not aware that the plan had been entirely completed, that in ordinary years and in ordinary times the money thus collected from the various provinces should be spent in reproductive works for the benefit of those provinces. But hon'ble members were aware that in such crises as lately occurred in Madras, any one province was incapable of bearing the whole burden of such a famine from its own resources, and therefore this fund, which would be formed from the contributions of the various provinces, would be held available to meet such famines wherever they occurred. Now that was a principle to which he understood his hon'ble friend had agreed in the early part of his speech, when he said it was right of the Government to lay upon Bengal her share of the cost of the famine, and His Honor thought it was a principle which no one would dispute. He must say he thought that, so long as in ordinary years the money raised under the Act was spent in the province, they could not grumble if, in times of great emergency, the money was expended for the benefit of other provinces, Bengal getting similar assistance from other provinces in return. In speaking of the actual amount mentioned by Sir John Strachey on account of famine expenditure as 9¼ millions, and calculating the interest upon it as 40 lakhs, the hon'ble member said that the share of Bengal would be but a small proportion of that sum. But his hon'ble friend did not go back far enough. What Sir John Strachey said was that, although the late famine in Bombay and Madras cost 9¼ millions, there would be a further item of 7 millions which had been expended for the relief of the famine in Bengal. Now this should also be taken into account, and as it happened the amount which Bengal was now asked to contribute, and which had been limited to 30 lakhs in the manner which was now proposed, was nearly the interest of the 7 millions which had been expended from the Imperial Revenues upon Bengal alone. Although the amount of 30 lakhs was not mentioned in this Bill, he had received a despatch from the Government of India limiting the payment from Bengal to thirty lakhs for the present at least, leaving the local Government to use for provincial purposes and public improvements in the province under their own supervision anything in excess of that thirty lakhs which might be raised under this Bill. His Honor thought that that really met very much the views of his hon'ble friend in suggesting that the Government demand should be limited, and the balance credited to the Provincial Revenues, and this was not certainly a condition which the Council could with propriety make on the Bill.

The other questions to which the hon'ble member had alluded were, as His Honor had said before, questions of detail; in some of which he concurred, and the remainder would receive the fullest consideration at the hands of the Select Committee.

The Hon'ble Baboo Kristodas Pal enquired whether it would be competent to the Select Committee, to whom the Bill might be referred, to introduce a provision to the effect that in ordinary years the proceeds of the tax should, after providing for a proportional share of the interest upon the loans which had been raised on account of famine expenditure, be appropriated to the construction and maintenance of provincial works of a reproductive character, and that in exceptional years and times of emergency the proceeds of the tax might be applied in such manner as to the Governor-General in Council might seem fit. The insertion of such a provision in the Bill would afford the taxpayers some assurance that the money paid by them would as far as possible be expended for their own benefit.

His Honor the President said it was not in his province to modify the orders of the Government of India; but the despatch on the subject which had been received from that Government would be submitted for the consideration of the Select Committee and published for general information.

The Hon'ble Mr. Bayley said he had only a few remarks to make in regard to the criticisms to which the Bill had been subjected by the hon'ble member to his left (Baboo Kristodas Pal), these criticisms having already been analysed by His Honor the President. They had all listened with pleasure to the eloquent exordium with which the hon'ble member spoke in the name of the people of India, expressing their earnest appreciation of the labours of the British Government and the generosity of the English people in their endeavour to cope with the famine which occurred during the past year, and for his loyal and healthy criticism of the principle of the Bill of which the President had already expressed his appreciation. There was one point, however, which the hon'ble member first took up on which Mr. Bayley thought there were still some remarks which might be made. He said that Sir John Strachey had explained that there were two possible ways of dealing with the present difficulty—one of which was retrenchment, and the other was taxation. The hon'ble member said he was in favour of retrenchment. Well Mr. Bayley had no doubt that the Financial Member of Council would accept the hon'ble member as an able and earnest disciple of his own. Nothing could be stronger than what Sir John Strachey said in Council on this subject. But Mr. Bayley thought that everybody who was present in Council at that meeting (as his hon'ble friend was) ought to be convinced that all the pains and labour which the Government of India could give to the question of retrenchment had been given. If the principle of the Bill was adopted, the hon'ble member said that as soon as time was given for retrenchment, say in three years, this extraordinary taxation should come to an end. Mr. Bayley could not concur with the suggestion which had been made by the hon'ble member. If he would allow him, Mr. Bayley would point out one or two things which the Financial Member said the other day. He said in regard to civil expenditure—

"I had the satisfaction of showing, in March last, that, excluding famine relief and loss by exchange—an element practically beyond our control—a reduction of the net civil expenditure had been effected in the seven years from 1869 to 1876, amounting to no less than £1,500,000 a year. This fact justifies me in asking the Council and the public to trust in the determination of the Government of India to spare no pains to keep down the demands upon the public treasury for the Civil Services."

He went on to mention in regard to the Military Service that the control of expenditure was not so much in the hands of the Government of India as they could desire—

"The Government of India must certainly endeavour to find the means of meeting the increased military charges, some of which are apparently inevitable, by economies in other departments of the Military Service; this endeavour must be largely dependent for success upon the support of Her Majesty's Government. I do not assert that the whole of the additional expenditure on the Army has not been incurred for excellent objects, or that it could have been avoided; but that the Indian revenues are liable to have great charges thrown upon them without the Government of India being consulted, and almost without any power of remonstrance, is a fact the gravity of which can hardly be exaggerated."

He then went on to say that in the endeavour to keep down these charges he had the support of the Secretary of State, and finally, regarding the suggestion of a grant to this country out of the British revenues, he said that "in dealing with questions which arise, where the separate pecuniary interests of the two countries come into apparent conflict, as for instance in apportioning the cost of the British Army between England and India, England should be strictly just, may I not even say that she should be generous, to this comparatively poor country." MR. BAYLEY thought that, with these two statements before them, the Council might have sufficient confidence in the earnestness of the Financial Member of Council, not to express an opinion on their part which would simply amount to a vote of want of confidence.

From the question of retrenchment, the hon'ble member went on to criticise the nature of the tax. MR. BAYLEY had very little to add to what His Honor the President said on the question of this tax approximating to an income tax. But his hon'ble friend would allow him to point out that the whole strength of the opposition which had been made to the income tax was on the ground, not of its being unjust or unfair (in his own opinion he thought an income tax was logically and on principle the best), but because the circumstances of the country did not allow it to be carried out without great oppression, and what gave opportunity for this oppression were the inquisitions which were necessary to be made in the first instance into the amount of income. This license tax was expressly designed to avoid that. In the detailed criticism he did not propose to follow the hon'ble member. It all amounted to this, that the schedule had been drawn up with too wide gaps—that it should be more detailed and more graduated. MR. BAYLEY thought that if we had a finely graduated schedule, which was no doubt the fairest plan theoretically, it could not but lead to the very inquisition and oppression which all opponents of the income tax deprecated as its fatal element. It was not difficult for an assessor to say whether a man's income fell within the rate of Rs. 100 or Rs. 32; but when you came to minute gradations, it must involve inquisition to place a man's

income in the right category. Beyond this he should not go, as the President had already pointed out the apparent inconsistency in the grounds of objection taken by the hon'ble member, first that it was an income tax, and afterwards that it was not an income tax.

Most of the other points which had been raised were points for the consideration of the Select Committee. With regard to the question of appeal, he must say that he thought that the practical inconvenience of giving an appeal would be overwhelming, although on principle he saw no objection. The question relating to stamp fees was clearly beyond the province of this Council. Also in regard to the question of Bengal expending on itself all the money that it raised under this Bill for famine taxation, he would remind the hon'ble member that Sir John Strachey had pointed out that the Orissa famine cost the Imperial Government about 1¾ millions sterling, and the Bengal famine of 1874 about 6¼ millions—altogether 8 millions. So when the hon'ble member pointed out that if Bengal had to meet a proportion of charge upon the cost of the Madras famine, Bengal would not have to pay 30 lakhs of rupees, he omitted to go far enough; he did not recollect that to the 9¼ millions for the Madras and Bombay famine, the cost of the Bengal famines would have to be added. Anyhow, MR. BAYLEY thought that on general grounds the people of Bengal could scarcely object to pay their quota towards the general Famine Insurance Fund of the Imperial Government of India. He would quote here what was said in Council on this subject by the Viceroy on the same occasion:—

"I am aware that there are already some parts of India where exclusively local interests are practically secured by the bounty of Nature, or the industry of man, from the direct effects of famine. In the nature of things the population of those particular localities may, and probably do, derive some immediate advantage from the periods of scarcity which so fearfully afflict their fellow-subjects in other provinces. But it would be an insult to suppose that their fortunate exemption from the perils and sufferings common to the rest of the community can furnish any argument, they would stop to urge, in favor of exempting them from their fair participation in the support of any general burden imposed for the protection of the whole community from such sufferings and perils. Whilst therefore I do not doubt that the chief cost of protective works ought to be borne by those who most need them, and will chiefly benefit by them, I must maintain that no province of the Empire, and no class of the community, can be legitimately cleared of the national obligation to contribute to the means required for the construction of such works."

The HON'BLE MR. MACKENZIE said in reply that after the speeches of the Hon'ble President and the hon'ble member who spoke last, there remained very little for him to say with reference to the remarks of his hon'ble friend on the right. He might, however, be allowed to observe that the words "Income Tax" seemed really now-a-days to be used as a sort of bogey to frighten children with. Every direct tax must have *some* reference to a man's means, and be in that sense an income tax; and *in that sense* he had no objection to this license tax being called a rough income tax, or designated by any other form of words that expressed a patent and inoffensive fact. But if it was sought to affix to it any stigma, such as attached in the minds of the people to the old income taxes of byegone years, by dubbing it a rough income tax, then he could

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only say that it bore so rough a resemblance to that finished work as to appear a mere crude block, in which hardly a lineament of those abhorred features could be discerned by the most prying eyes.

Again, there was some inconsistency to his mind between the hon'ble member's remarks with reference to the incidence of the tax in the lower grades and what he said subsequently in praise of the salt tax. He (MR. MACKENZIE) knew of no tax which pressed more unequally than the salt tax upon the poor as compared with the rich. Inequality in a tax such as was now proposed was unavoidable; but it was much less, take it how we would, than was the inequality of incidence under the salt tax.

As regarded the hon'ble member's criticism of details, he might draw attention to the fact that the Collector's subordinates would in their proceedings be subject to his orders. The hon'ble member said he would be satisfied if the Collector of the district were ultimate referee. Practically this would be so, and a simple power of revision by the Collector would probably meet the hon'ble member's views, and do away with the difficulties attending a formal appeal. The other points noticed would be taken up in Select Committee.

The Hon'ble President had thoroughly disposed of the hon'ble member's suggestions for the creation of provincial autonomies. Nothing could be worse for Bengal than the introduction of such a principle, so long as Behar remained an integral part of the province. One consideration had not, however, he thought, been sufficiently adverted to in the discussion The cardinal point in the Government of India's policy in dealing with famine in future was to meet such charges not from loans, but from income. The hon'ble member lost sight of this altogether, and yet it was a principle which seemed to have met with cordial acceptance both in India and England. The local Government was not called on to pay interest on loans, but to help to raise the State income to a point of safety, and to secure a sufficient annual surplus to make it independent of famine loans. However the money might be spent, Bengal must gain. If there were famine awaiting it, Bengal was guaranteed by the Empire. If remunerative protective works were undertaken within the province, and paid for from these funds, Bengal still gained. If debt were reduced, Bengal would profit as much as any other province

One word before he sat down, as to the incidence of the tax. He was not sure if he had made it sufficiently clear that Government was not contemplating a raid upon the poor and indigent. There were not many rich men in Bengal. Government was able, under the Certificate Tax Act, to find only about 61,000 trade incomes over Rs. 500 in all Bengal. It did not know exactly the number of trade incomes between Rs. 500 and Rs. 200 (the numbers of incomes of all kinds between these limits touched by the licence tax of 1867 was only 150,000); still less did it know the number of trade incomes below Rs. 200. But nearly every mofussil village had its local traders and artizans, well to do in a humble way and according to the standard of comfort prevalent in the country. These people paid nothing to the State at present, though they were as well able to do so as their agricultural neighbours. These were the classes it was intended to touch. Government guarded against taxation of the very poor—as this country

counted poverty—by the insertion of the 2 per cent. limit and by requiring the tax to be paid in one instalment. If a man *could not* pay one rupee, he would not be taxed at all. Even in Calcutta the poor would not be taxed, for in the lower grades it was provided that the Commissioners were to consider the circumstances of each, and in weighing these circumstances, the fact that municipal taxes were heavy would not be forgotten.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Reynolds, the Hon'ble Mr. Bayley, the Hon'ble Baboo Ramshunker Sen, the Hon'ble Baboo Kristodas Pal, the Hon'ble Mr. Jennings, and the mover.

The Council was adjourned to Saturday, the 19th January.

By subsequent orders of the President the Council was further adjourned to Saturday the 2nd February.

Saturday, the 2nd February 1878.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble S. C. BAYLEY,
The Hon'ble H. T. PRINSEP,
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR.
The Hon'ble NAWAB MEER MAHOMED ALI,
The Hon'ble H. F. BROWN,
and
The Hon'ble RAJA PRAMATHA NATHA ROY, BAHADOOR.

CONSOLIDATION OF THE LAW RELATING TO THE EXCISE REVENUE.

The HON'BLE MR. REYNOLDS moved for leave to bring in a Bill to consolidate the law relating to the Excise Revenue in the Presidency of Fort William in Bengal. He said, it would be in the recollection of hon'ble members that the question of the consolidation of the Excise Law was under the consideration of the Council last year, and that eventually a Bill was passed and submitted for the approval of the Governor-General. The Governor-General, however, considered it necessary to withhold his assent from the Bill, as he was advised that the Bill as passed by the Council interfered with the jurisdiction of the High Court and the Small Cause Court, and that it was not within the competence of this Council to pass such a Bill. The offending section was merely a reproduction of section 8 of Bengal Act II of 1876; it was based on the

English Tippling Act, and prohibited the recovery of petty debts on account of liquors and drugs by action in the civil courts. This provision of law was found to work exceedingly well in England, and he believed it would operate beneficially in Calcutta. But there was no doubt that the section as it stood did interfere with the jurisdiction of the Small Cause Court, and might interfere with the jurisdiction of the High Court. The only excuse the Council could have was that the section was originally suggested to them by a Judge of the Small Cause Court, and that the measure itself merely reproduced a section of the existing law of the land at the present moment. However, the Bill having been vetoed, the opportunity had been taken not only to remove the offending section, but also to make some changes in the arrangement of the Bill and to introduce a few alterations. If the Council would be pleased to grant him leave to introduce the Bill, he hoped to be able to bring in the Bill at the next meeting of the Council.

The motion was agreed to.

POWERS OF SETTLEMENT OFFICERS AS TO ENHANCEMENT OF RENT.

The Hon'ble Mr. Reynolds moved that the Report of the Select Committee on the Bill to define and limit the powers of Settlement Officers in respect to the enhancement of rent be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The report had been circulated and published, and it explained the object and intention of the Bill. In section 3 the Committee considered that the words as they stood in the original draft regarding "the superior Revenue authorities were perhaps ambiguous, and they thought it desirable to introduce words which should distinctly recognise the practice by which the Government from time to time prescribed who should be the authority empowered to sanction settlement proceedings. Perhaps it would be convenient that he should state somewhat more fully how the matter stood. As far as he was aware, there was no provision of law which prescribed who should be the authority to sanction settlement proceedings. Of course in settlement cases, as in other cases, an appeal was allowed from the Collector to the Commissioner, from the Commissioner to the Board of Revenue, and from the Board to the Government; but in cases which were not appealed, the power to sanction the settlement depended not upon any express provision of law, but on the executive orders of the Government. Up to the year 1871, the rule in this matter was that the Collector had power to sanction all settlements in which the revenue did not exceed Rs 500, and that settlements involving a revenue above that amount must be sanctioned by the Commissioner of the Division. Sir George Campbell was dissatisfied with that procedure, and considered that in some cases settlement proceedings had been somewhat hastily conducted, and due care had not been taken to preserve the rights of the ryots. He therefore directed that the power to sanction settlements should be withdrawn from the local officers, and that even the Board of Revenue should only possess a power of

provisional sanction, and he desired that all settlements should be referred for final sanction to the Government. That practice continued in force for about three years; but in 1874 Sir Richard Temple considered that the principles which Sir George Campbell desired to establish were fully understood, and that it was unnecessary that the Government should take the trouble to look into the details of every settlement, however petty. Accordingly he directed that the power of sanctioning settlements up to a revenue of Rs. 2,000 should rest with the Commissioner of the Division, and that settlements above Rs. 2,000 and not exceeding Rs. 25,000 should be confirmed by the Board of Revenue. Settlements above Rs. 25,000, and all settlements in which a permanent settlement was proposed, were to be submitted as before for the final sanction of the Government. That was the rule at present in force, and it seemed desirable, in framing this Bill, that it should be provided that the Revenue authorities from time to time empowered by the local Government should be the authorities recognized as authorized to confirm settlements.

In section 4 the Committee had attempted to deal with a difficulty felt by every zemindar who brought an enhancement suit, namely the service of the notice required by law. Whatever other pleas might be urged by the defendant in an enhancement case, there was one regular stereotyped objection taken by the ryot, that notice of enhancement had not been served. The utmost publicity, the Committee thought, should be given to the rates fixed by Settlement Officers; but at the same time there should be no room given for frivolous and technical objections. They provided for a personal notice, but at the discretion of the Collector personal and individual notices might be dispensed with, and a general notice served on the village by the old and well-established practice by beat of drum, which was found to be the means of giving fuller and better information than the mere sticking up of a paper; and if this notice was served by beat of drum, and also stuck up in a conspicuous place in the village, it would not be necessary that a personal notice on each ryot should be made.

Mr. Reynolds observed by the amendment paper that the section as agreed to by the Select Committee did not entirely commend itself to one hon'ble member, but he hoped to show, when that amendment was moved, that it was not called for.

In section 5 the Committee thought it desirable to explain that the provisions of the Bill should extend to settlements now pending. He was not sure that the section was necessary, but the Board of Revenue had represented that there were a number of important settlements in hand, especially those in the districts of Midnapore, Chittagong, and Pooree, and it was of great importance to know whether the provisions of the Bill applied to pending settlements or not. The Committee had therefore provided that the provisions of the Bill should apply to all settlements the proceedings in regard to which had not yet been confirmed, whether such proceedings had been commenced before or after the commencement of this Act.

The motion was agreed to.

The Hon'ble Mr. Reynolds.

The HON'BLE BABOO ISSER CHUNDER MITTER begged leave to submit, for the consideration of the Council, two small amendments with reference to the service of notices. These amendments were in furtherance of the principle enunciated in the Bill. It would be seen that in section 2 it had been provided that, in the case of settlements conducted under Regulation VII of 1822, there should be no enhancement of rent unless under one or other of the grounds specified in section 17 of Act X of 1859, or section 18 of Bengal Act VIII of 1869. Now, the jummabandi which was usually made contained the rent assessed after settlement upon all ryots and under-tenants, and an extract of this jummabandi was to be affixed in the village with a general notice to all whom it might concern, in lieu of the notice enjoined in section 14 of Act VIII of 1869, or section 13 of Act X of 1859. Now, this notice would acquaint the ryot only with the rent assessed, or rather the enhanced rent assessed, in respect of each tenure. The notice under section 13 of Act X of 1859, and the corresponding section of Act VIII of 1869, specified the rent to which the ryot would be subject for the ensuing year and the ground on which the enhancement was claimed. It would therefore be observed that the jummabandi would place in the possession of the ryot only the rent at which he was assessed; it would not specify the grounds of enhancement, which must in settlement proceedings be specified under section 2 of this Bill. The object of the amendment was simply to provide that in the jummabandi the ground of enhancement should also be specified, briefly of course, so that when a ryot proceeded under section 3 to contest his liability to the enhanced rate of rent, which he was required to do within the limit of three months, he might be able to meet the grounds stated in the notice. It was only with that object that BABOO ISSER CHUNDER MITTER suggested the consideration of the amendment which stood in his name. When the notice was served personally on the ryot, which would be the exception rather than the rule, it would call upon him simply to sign the jummabandi, and would not therefore contain either the enhanced rate he had to pay, or the grounds of enhancement. That notice would not be issued in all cases. But when a settlement was conducted in a number of villages, the notice would be given by beat of drum, and the jummabandi would contain only the rate of rent assessed, and not the ground of enhancement in each case. It was admitted in the Bill that the grounds of enhancement were to be stated, and the object of the amendment was only to inform the ryot what those grounds were, so that, if he were to contest his liability to pay enhanced rent, he might know what the grounds of such enhancement were. BABOO ISSER CHUNDER MITTER therefore moved—

In section 4, line 1, after the word "writing" to add "containing an extract of the jummabandi relating to any under-tenant or ryot and specifying the grounds of enhancement;" and for the word "on" to substitute "such."

In the proviso added to section 4 in line 7, after the word "*jummabandi*" to add the words "specifying the grounds of enhancement."

The HON'BLE MR. REYNOLDS said the amendment which had been proposed appeared to him to be altogether unnecessary and uncalled for. He thought that if the hon'ble member compared the present Bill with the Acts to which it was intended to be supplementary, he would see that the Bill did

not repeal any portion whatever of those Acts. The notice which was required to be served under section 13 of Act X of 1859, and section 14 of Bengal Act VIII of 1869, remained intact: it would have to be served in or before the month of *Pous* as provided by those Acts, and there was no alteration or modification of what the law required the notice to contain. MR. REYNOLDS therefore thought the amendment was superfluous, because the provision of the original law with regard to that notice remained untouched. At the same time, if there was any doubt, he thought the amendment undesirable, as opening a door to technical and frivolous objections to the enhancement of rent, which it was one of the objects of the Bill to prevent. Of course it was desirable that the ryot should know what enhanced rent he was called upon to pay, and on what grounds he was required to pay it; that was obvious, and it was not intended by this Bill to deprive the ryot of such information.

Moreover, with regard to the first part of the amendment, it did not seem necessary, when a personal and individual notice was served, that it must contain an extract of the jummabandi; there was no reason why it should. All that the ryot required to know was what was the rent he was called upon to pay, and the reasons upon which he was called upon to pay it. There was no reason, MR. REYNOLDS thought, to extend the law by providing that the notice should contain an extract of the jummabandi relating to the under-tenant or ryot; and with regard to the second part of the amendment, the section provided that the notice, with a copy of the jummabandi, or of such part thereof as the Collector might think fit, should be affixed at the mâl cutcherry of the village, or at some other conspicuous place therein. That should be quite sufficient without requiring in the law that the jummabandi must specify the grounds of enhancement. MR. REYNOLDS therefore hoped that the Council would not accept the amendment.

The HON'BLE MR. MACKENZIE said he thought the best justification of the Bill as it stood was the consideration of the fact that the proceedings in making land revenue settlements were not things done in a corner, but were done *coram populo*, before the people at large. The Bill only provided for the last stage of a long and careful investigation, of which every person interested had due notice. The first thing that a Settlement Officer had to do was to summon those interested in the land under settlement to attend him or his ameen during the subsequent operations, to point out the boundaries, settle the qualities of the soils, set forth their rights, and so on, and if any ryot was ignorant of what was eventually determined, it was only his own fault. A notice to him to come in and sign the jummabandi was the usual way of intimating to him that proceedings were closed, and he could, when he came in, ascertain all needful matters if he were ignorant of them before. If he objected he need not sign.

The HON'BLE BABOO KRISTODAS PAL said he confessed he had not been able to follow quite the reasoning which had been advanced by the hon'ble member in charge of the Bill in reply to the mover of the amendment. As far as he understood the wording of section 4 of the Bill, it provided that the notice served on the ryot by a Settlement Officer calling upon him to sign the jummabandi should be deemed a notice within the meaning of section 14 of Bengal

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Act VIII of 1869, and section 13 of Act X of 1859. Now, he fully agreed that section 14 of Bengal Act VIII of 1869, and section 13 of Act X of 1859, remained intact; but this Bill provided that the notice under this section should be considered to be a notice within the meaning of section 14 of the Act of 1869, and section 13 of the Act of 1859. If that was the case, then section 4 of the Bill, as it was worded, made a material difference; for the notice under those Acts must contain the grounds of enhancement, whereas under this Bill the notice would only call upon the ryot to attend and sign the jummabandi; there was nothing in the section to show that the notice should contain the grounds of enhancement, but as the notice under this section took the place of the notice under the Acts of 1869 and 1859, the difference made was at once apparent.

Then, again, there would be practically no personal notice, for under the second clause of the section it might be dispensed with, and a general notice addressed to all whom it might concern might be affixed with a copy of the jummabandi, or of such part thereof as the Collector might think fit, at the mâl cutcherry of the village to which the jummabandi related, or at some other conspicuous place therein. But as the Bill provided in section 3 that the ryot whose rent was enhanced might contest the proceedings of the Settlement Officer by a suit in the civil court within three months from the date of the service of the notice of enhancement, he ought to be placed in a position to know what were the grounds of enhancement; otherwise he would not know what evidence to adduce against the grounds taken by the Settlement Officer.

Whether the words proposed by the hon'ble mover of the amendment would meet the object aimed at or not, BABOO KRISTODAS PAL was not in a position to say. But he thought that in all fairness an opportunity ought to be given to the ryot to know on what grounds his rent was enhanced, so that he might be in a position to contest the enhancement, if he considered himself aggrieved. For these reasons BABOO KRISTODAS PAL would support the principle of the amendment, but would leave its wording in the hands of the Council.

The HON'BLE MR. PRINSEP said that he thought no member of the Council would be averse to giving the ryot every opportunity of learning the grounds on which his rent had been enhanced; but he thought that the grounds upon which this amendment was put were open to serious objection, inasmuch as it would practically neutralise the effect of the Bill by opening a loop-hole in the course of litigation by which the proceedings of settlement officers would probably be nullified. If we considered the publicity which attended the course of settlement proceedings, as one hon'ble member had already pointed out that all these proceedings were conducted *coram populo*, in the presence of the community; if we considered also that a notice was to be put up informing the ryot that his rent had been enhanced, and that it was necessary for him to sign the jummabandi, we would find that the ryot had two opportunities of expressing his own wishes; for he could attend and refuse to sign the jummabandi, and ask why his rent had been enhanced. That would be the second opportunity the ryot would have for ascertaining the grounds of enhancement. But, as MR. PRINSEP understood, the notice would be a general notice to all whom it might concern in such and such a village, and would probably run somewhat

thus—"Whereas the rate of rent has been found to be lower than the rent of land of this description in the adjoining villages, it has been raised from such a sum to such a sum." On the other hand, the provision requiring a specific notice to be served on each ryot would be embarrassing to those whose duty it was to prepare such notices, would open a loop-hole for technical and frivolous objections, and would be utterly useless as far as any specific information was concerned. There was nothing, moreover, in the Bill as it stood which would prevent an application by a ryot for specific grounds of enhancement. But where there were hundreds of ryots in a village, in regard to which settlement proceedings were being conducted, it would be next to impossible to specify accurately what the grounds of enhancement in each case were, and the bulk of papers would add to the difficulty which the ryot would have in tracing his own name. Therefore, MR. PRINSEP submitted that the amendment was not only open to objection, but likely to lead to embarrassment to all concerned in these settlement proceedings.

The HON'BLE BABOO ISSER CHUNDER MITTER begged to explain in reply that he understood that the notice in this Bill provided was, as regards settlement proceedings under Regulation VII of 1822, to stand in lieu of the notice provided for in section 13 of Act X of 1859 and section 14 of Bengal Act VIII of 1869. Taking that view of the matter—and that view he believed was not altogether wrong, as would be seen from what had fallen from his hon'ble friend opposite (Baboo Kristodas Pal)—and considering that some opportunity should be given to the ryot to know what were the grounds of enhancement, he took the liberty to suggest this amendment. He had of course nothing to say against the substitution of a general notice in lieu of the personal notice provided for in the first part of this section. But as a personal notice was provided for, he thought it necessary to suggest an amendment in respect to it also. There could be no doubt that settlement proceedings, conducted as they were by public servants, were always held in the light of day; but after the proceedings were concluded, and while the jummabandi papers were being written up, the Settlement Officer had perhaps moved from one part of the district to another. It was not that the jummabandi was written out at the time when the proceedings were concluded, but some time was occupied in its preparation; and therefore, as the ryot in all probability could not then have access to the Settlement Officer, the amendment was suggested to give him facilities to understand what the grounds of enhancement were. It was provided in the Bill that there should be no enhancement of rent, except on some one of the grounds specified in the existing law. The Settlement Officer must determine in each case what was the ground of enhancement, and if he had to determine that, it would not be difficult to record briefly the ground of enhancement in each case. It would only be necessary to add to the jummabandi a column, as it were, in which might be inserted, shortly, what were the grounds of enhancement according to the terms of the law; if it would be impracticable to state all the circumstances upon which the right to enhancement was based, the heads of the grounds as specified in the law might be given. The Settlement Officer would have to

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determine the grounds of enhancement in each case, and it would not be difficult to give a brief analysis, as it were, of those grounds for the information of the ryot.

The HON'BLE MR. REYNOLDS said the amendment was put in his hands late last evening, the usual notice of two days not having been given. There was no intention to withhold from the ryot the grounds upon which he might fairly be called upon to pay an enhanced rate of rent, but the wording of the amendment appeared capable of being improved. If, therefore, the hon'ble member would consent to withdraw his amendment, the matter would be further looked into, and before the Council was asked to pass the Bill, a section would be prepared to meet the principle upon which the amendment before the Council was based.

The amendment was then by leave withdrawn, and the further consideration of the Bill postponed.

EMIGRATION TO CHITTAGONG.

The HON'BLE MR. MACKENZIE moved that the report of the Select Committee on the Bill to extend the provisions of Bengal Act VII of 1873 (the Labour Districts Emigration Act) to the district of Chittagong, and to the Chittagong Hill Tracts, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The only substantial alteration which had been made in the Bill was, as pointed out in the report of the Committee, in section 4. It appeared that under the present arrangement coolies who were shipped to Chittagong did not actually enter into contracts with their employers until they landed there. The intention of the Bill was that all imported labourers, that is to say, all labourers carried to the tea gardens at the expense of their employers, should be brought under the provisions of the law, and the Committee had therefore altered the wording of the section to show this clearly. The Committee had had the advantage of the presence at their deliberations of a gentleman who was largely interested in tea plantations in Chittagong, in connection with the firm of Messrs. Bullock Brothers, who urged upon the Committee that this Bill would be useful not merely in regulating the transport of emigrants and providing for proper medical arrangements, but by regulating the inspection of gardens by the constituted authorities. At present these inspections were made, but without any specific legal authority, and the inspecting officers were sometimes, it was said, tempted to push their powers beyond what was reasonable. The introduction of the Act would give a common standard to which planter and Magistrate could alike appeal, and would, he did not doubt, prove advantageous to Government, to the planter, and to the labourer.

The HON'BLE MR. BROWN said he had not opposed this Bill because opinion was divided amongst those interested in the tea enterprise in Chittagong as to the desirability of extending the Act to that district. Whilst some protested against it, others petitioned for it. On the one hand, the Council had been told that instead of benefitting native emigrants, the Act was more likely to injure

them, since upon most gardens the labourers were receiving a higher rate of pay than that stipulated in agreements under the Act; that the official inspections had already done harm by encouraging unreasonable complaints; and that this trouble was expected to be aggravated when the authorised inspections came to be made under the Act. On the other hand, some proprietors complained of the want of a settled basis upon which to deal with their labourers, and the fact of having before the Council a requisition from a tea proprietor to be allowed the benefit of the Act in Chittagong, seemed to him to turn the scale in favour of granting its extension to that district. For his own part, he must say that, so far as his knowledge went, he thought the Chittagong district could have got along very well without the Act; but for the reasons he had just stated, and because he did not regard the question as of very vital importance to the tea interests there, he had not refused to join his colleagues upon the Committee in assenting to the Bill. What they had to fear in all these cases was not the measures themselves, so much as the danger of their indiscreet administration; and he trusted that in the present instance care would be taken to utilise, in every way possible, the experience acquired in other tea districts, so that the new regulations might be introduced into Chittagong in a spirit such as would secure the support, and win the confidence, of the tea planters there. He had mentioned upon the Committee, and he would wish to repeat here, that he should have been glad had the opportunity been taken to revise the Act before extending its application. The hon'ble member who first introduced the Bill eulogised the Act as having worked so well in the other tea districts. But whilst MR. BROWN did not deny that some of its provisions were wisely conceived, and had worked usefully, he should not wish it to be understood that he gave an unqualified adherence to the late hon'ble member's opinion upon that point. On the contrary, as he thought the Council must be aware, there were many points in which the working of the Act was considered not only by importers of labour, but also by Government officers in the tea districts, to be far from satisfactory. One of the ablest officers in Assam, and who was perhaps the best acquainted with the working of the emigration rules, went, as he understood, so far as to counsel a repeal of the Act, except in a few particulars; and the Chief Commissioner of Assam, in his latest minute upon the subject, declared it his opinion that the less organized interference there was in immigration matters the better: so that MR. BROWN thought it was rather to be regretted that in the face of their experience in Assam, an admittedly imperfect Act should be applied without revision to a new district. He bore in mind that they were not now discussing the merits or demerits of the Act, and he would therefore not enter further into that part of the subject. The present question was merely the extension of the Act, such as it was, to the Chittagong districts; and if, as he supposed, the Council adopted the recommendations of the Committee, it only remained to repeat the hope that they would see a discreet and judicious administration of the local provisions. He was bound to say that the provision which seemed to particularly excite the apprehensions of the Chittagong planters, namely, the inspection of labourers on the tea gardens, was one

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which, even under a revised Act, the Government officers would desire for the present to retain in Assam. He had not found, however, that well-intentioned planters, upon properly regulated estates, objected to that provision; and if it were carried into operation in Chittagong upon the judicious system which had been evolved out of long experience in Assam, he thought the apprehensions of their Chittagong friends upon that point would prove to be unfounded. He had only to add that he trusted the time was not far distant when a general revision of the Act would be undertaken, with the main object of promoting freer emigration to the tea districts. Some sort of power to enforce contracts with time-expired labourers was also much needed. In the meantime they should be able to watch the operation of the Act in Chittagong, and when the time came, he hoped they should be able to ameliorate its working as concerned both Chittagong and the other tea districts.

The motion was agreed to, and the clauses of the Bill settled without amendment.

On the motion of the HON'BLE MR. MACKENZIE the Bill was then passed.

LICENSE TAX ON TRADES, DEALINGS, AND INDUSTRIES.

The HON'BLE MR. BROWN said he should wish to ask the hon'ble member in charge of the Bill for licensing trades, dealings, and industries within the territories subject to the Lieutenant-Governor of Bengal when the report of the Select Committee would be brought forward. It was a matter in which much public interest was taken and therefore he asked for information.

The HON'BLE MR. MACKENZIE said that no time had been fixed by the Council for the presentation of the Select Committee's report, and it would have been made before now, but for the consideration of material amendments in the shape and schedules of the Bill. He hoped that on Monday next the Committee would be able to come to a final settlement. The Committee had provided for a higher grade tax of Rs. 500 as was originally proposed by the Bengal Government, and they had also provided that incomes below Rs. 100 per annum should not be taxed. They had done this to preclude the possibility of any oppression on the poorer classes of the community. While retaining this limit of Rs. 100 as the minimum taxable income, the Committee had retained the lowest rate of fee, viz. one rupee, which would enable Collectors to let off easily those who, while coming within the range of the tax, were still really in poor circumstances. The provisions of the Bill had been so re-arranged as to keep the provisions which were applicable to the province generally in one part, and the provisions which were specially applicable to Calcutta in another part, thus making the Act much clearer and simpler in working. The Committee had provided for an appeal from the assessing officer to the Collector of the district. The re-arrangement of the Bill as above described had taken some time. It had been necessary also to be in close communication with the Government of India, so as to be informed of any alterations which that Government might think it necessary to make in the License Tax Bill for the North-Western Provinces. He hoped, however, if nothing interfered, to present the report of the Select Committee on Saturday next.

The Council was adjourned to Saturday, the 9th February.

Saturday, the 9th February 1878.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble S. C. BAYLEY,
The Hon'ble H. T. PRINSEP,
The Hon'ble BABOO RAM SHUNKER SEN, RAI BAHADOOR,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR,
The Hon'ble NAWAB MEER MAHOMED ALI,
The Hon'ble H. F. BROWN,
The Hon'ble F. JENNINGS,
and
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR.

CONSOLIDATION OF THE LAW RELATING TO THE EXCISE REVENUE.

The HON'BLE MR. REYNOLDS said that at the last meeting of the Council he explained the circumstances which rendered the introduction of this Bill necessary, and he need not now detain the Council by making any further observations on that point. The statement of objects and reasons circulated with the Bill showed the chief alterations which had been made in the present draft. They were principally in the direction of a re-arrangement and condensation of the provisions of the Bill, and probably some more changes might be necessary in the same direction. He moved that the Bill to consolidate the law relating to the excise revenue in the Presidency of Fort William in Bengal be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Mackenzie, the Hon'ble Baboo Isser Chunder Mitter, the Hon'ble Rajah Pramatha Natha Roy, and the mover, with instructions to report in one month.

POWERS OF SETTLEMENT OFFICERS AS TO ENHANCEMENT OF RENT.

On the motion of the HON'BLE MR. REYNOLDS, the Bill to define and limit the powers of settlement officers in respect to the enhancement of rent was further considered in order to the settlement of its clauses.

The HON'BLE MR. REYNOLDS said that he had a small amendment to propose in the second section of the Bill. The section provided that the rent of a ryot having a right of occupancy should not be enhanced "except on

some one of the grounds" specified in section 18 of Bengal Act VIII of 1869, or section 17 of Act X of 1859. It appeared to be necessary to add the words "or more" after the words "some one." Cases might occur in which it might be desirable to enhance the rent of an occupancy ryot on more than one of the grounds specified in the law, and therefore it was considered proper to move the insertion of the words of which he had given notice.

The motion was carried, and the section as amended was agreed to.

The HON'BLE MR. REYNOLDS said he had an amendment of an entirely verbal nature to propose in the third section of the Bill. The section as it stood spoke of "the rent of an under-tenant or ryot having been in any way enhanced" in the course of any settlement proceedings conducted under Regulation VII of 1822. It had been suggested that that language was not in conformity with the wording of the Regulation, which did not speak of the enhancement of rent, but merely of a record of the rent demandable from under-tenants or ryots. There was practically no difference between enhancing a ryot's rent and recording a higher rent as demandable from him, and therefore the amendment proposed was purely verbal, and with the object of bringing the wording of this Bill into harmony with the wording of Regulation VII of 1822. He moved in section 3, lines 9, 10, and 11, to omit the words "the rent of any under-tenant or ryot has been in any way enhanced," and substitute for them the words "a higher rent has been recorded as demandable from any under-tenant or ryot than was previously paid by him."

The motion was carried, and the section as amended was agreed to.

The HON'BLE MR. REYNOLDS moved the insertion after section 4 of the following new section:—

In case of enhancement, the rent and grounds of enhancement to be specified in notice.

"5. Whenever in any settlement proceeding conducted and confirmed as aforesaid a higher rent than the rent previously paid has been recorded as demandable from any ryot having a right of occupancy, the amount of such higher rent and the grounds of the enhancement shall be specified in any notice served upon the said ryot under clause 1 of section 4, or in the *jummabandi* appended to any general notice served under clause 2 of section 4, as the case may be."

He moved this amendment to meet the objection raised by the hon'ble member on his right (Baboo Isser Chunder Mitter) at the last meeting of the Council, that the Bill did not provide for the giving of notice of the grounds upon which an enhancement of rent was made. MR. REYNOLDS was not even now satisfied that the insertion of the section was necessary. It appeared to him that as the Bill did not repeal the provisions of the existing law, the particulars which the existing law required to be inserted in the notice of enhancement would still have to be inserted in notices issued under the Bill, whether any express provision for their insertion was made or not. But as the matter appeared to be doubtful, and it was not in any way intended to withhold from the ryot the necessary knowledge of the grounds of enhancement, he proposed the insertion of the section which he had just moved, and which he believed would provide all that was necessary.

The section was agreed to.

The HON'BLE MR. REYNOLDS postponed the motion (of which notice had been given) to pass the Bill. He had received only that morning a communication on the subject of the Bill which required further consideration, and he wished to give to it that further consideration before asking the Council to come to a final vote on this Bill.

LICENSE TAX ON TRADES, DEALINGS, AND INDUSTRIES.

The HON'BLE MR. MACKENZIE said:—"In presenting to the Council the report of the Select Committee, I do not propose to detain them by any very lengthy remarks. Nothing that I could say will make the measure, as a measure of taxation, welcome; but it will be satisfactory if it is admitted that the Bill attains its avowed object without being open to serious objection in respect of its details. The general principles of the taxation involved in the measures now pending before this and the Supreme Legislature have been settled and laid down by the Government of India. It has been the duty of the Local Government loyally to accept those principles, and to endeavour to give full effect to the intentions of the Supreme Government.

The chief complaint made against the Bill as originally introduced was, so far as I have been able to gather, that it carried taxation too low down in the social scale, and imposed a burden upon the poor disproportionate to that laid by it upon the rich. The Bill was certainly from one point of view obnoxious to these criticisms. But it was not the intention of Government that the tax should press heavily upon either poor or rich. Inequality of incidence we could not, and do not now, attempt altogether to avoid. I know of no tax in the whole economic world that has a perfectly equal incidence. But it was hoped that the whole burden would be so light that no shoulder would be galled by bearing a little more of it than was strictly speaking its proper share.

Be that as it may, in the Bill as now amended it has been found possible to introduce a minimum limit of incidence, which should go far to dissipate all fears that the tax will press unduly upon the very poor. In Bengal an annual income of Rs. 100 represents a standard of comfort far removed from actual poverty, and a tax of Rs. 2 per annum is not too much to take from incomes between Rs. 100 and 250. But lest those whose earnings only just bring them within this limit should in any particular cases be too hardly pressed by a 2 per cent. tax, we have left the one rupee grade of fee to serve as a safety valve for the feelings of sympathetic collectors.

We have next, at the risk of evoking a perfectly fresh phalanx of critics, sought to meet the objection that the maximum rate of tax originally proposed was too low. Rs. 200 per annum represented a 2 per cent. tax upon all trade incomes over Rs. 10,000 per annum. It was urged that many persons would thus be brought together in the highest class of licensees whose incomes were widely different, and it was argued that we were practically exempting the wealthy traders, while taxing substantially those of moderate means. It was felt by the latter to be a serious grievance that their richer neighbours should not pay more than they. We cannot hope to put a stop to this envying and grieving at the good of a neighbour, but we have introduced a higher grade of

fee, Rs. 500, which will fall on all trade incomes estimated to amount to Rs. 25,000 and over. We have also made the tax on the wealthier trader more substantial by requiring separate licenses in each district where he carries on business, the amount of fee to be regulated by the amount of business done in the district. This arrangement will at the same time prevent complication in accounts and correspondence between districts. Lastly, I may repeat what I said when introducing the Bill, that the license is to be a personal matter. The tax is a personal tax upon certain classes, subject always to the 2 per cent. limit upon incomes, and the Bill does not recognize firms other than Joint Stock Companies. The tax on the wealthier traders is thus on the whole quite heavy enough, and the most ill-conditioned assessee in the lower grades *ought* to be satisfied that we have not allowed the rich to escape so easily as it was feared they might.

I stated when I introduced this Bill that the trades and industries of Bengal contributed almost nothing to Imperial or Provincial taxation, and that it was one of the chief objects of the measure to remove this anomaly. The wealthier Calcutta firms were, if we might judge from their silence, quite content that the anomaly should be removed, so long as the process did not involve the deduction of more than an imperceptible fraction from their annual earnings. But when it was decided to exempt the poorer classes of native traders, and it became necessary to seek compensation at the top of the mercantile scale, the tax upon trade ceased apparently to be acceptable, and cheap resignation has (if the daily papers are any test) given place to a healthy constitutional grumble. I can quite understand and even sympathise with the grumble, but I do not admit the validity of the argument in which it is expressed. It is not, in my humble judgment, sufficient to condemn this measure to say that it is not a license, but an income tax. When men say that 'an income tax' in India is a hateful measure, they mean "*the* income tax," technically so called and known, embodied in certain repealed enactments of the Indian Statute Book, by which direct perquisition was made into the precise amount of a man's profits from every source derived, and under which the amount he had to pay was a strict percentage on his total income. The tax now proposed is not '*the* income tax' or anything like it. The bogey style of argument has only to be looked at to make it disappear. I frankly admit *per contra* that the tax provided for in the Bill is not a license tax in the European acceptation of that term. A license tax properly so called prohibits the carrying on of any occupation, unless the tax for it is paid, and admits of *no* exemption. This is a tax upon the trading and industrial wealth of Bengal, operating by means of a system of licenses, and limited ultimately, as regards individual licenses, by consideration of the amount of their trade income. It is avowedly an engine for increasing the public revenues, to enable those to meet charges necessary for the prevention and mitigation of the dire effects of famine, and it attempt to secure its object by taxing the classes who contribute least at present to the State Exchequer, while benefiting most by the State protection. It avoids all inquisitorial inquiry. It seeks, by the arrangement of the rates of fee, to facilitate fair assessments

based upon general grounds; and it provides for direct reference to income only at the option of the tax-payer himself, recognising such reference as the only possible ultimate standard by which to judge of the fairness of any disputed assessment. Let it be called a license tax, or an income tax, or what men will; so long as it is a necessary tax, moderately fair in its incidence, productive in its results, and practicable as regards its working, it is a tax to which no objections can be urged that would not apply to any measure having the same end in view which the Government might propose.

In the lower grades the Select Committee have followed the suggestion made at the introduction of the Bill, and have readjusted the rates of fee. They have also greatly improved the Bill, I think, as regards its general shape, and I trust that the Council may be able to accept it in the form it now takes.

The Select Committee have received only one communication of any importance with reference to this Bill. In a letter from the British Indian Association, it is urged that the taxation now proposed ought not to be made permanent, and that an assurance should be given that the new burdens will be withdrawn as soon as the retrenchments which the Committee believe feasible are made in the Imperial expenditure. It is further urged that the tax is to all intents and purposes a public works cess, and that to impose this upon Bengal in addition to the provincial cess of 1877 is inequitable. In paragraphs 17 *et seq.* of their letter, the Association criticise further the section providing for the application of the proceeds of the tax. These, Sir, are matters with which the Select Committee did not feel themselves competent to deal. They amount to criticisms of the Imperial policy, and will no doubt be duly considered and noticed in another place. There were, however, other suggestions made by the Association on points of detail to which the Committee have given full consideration. We have been able to meet the views of the Association by providing for remission of tax where a trader only works for a part of the year; by limiting the period within which recovery of tax can be effected by legal process; by giving an appeal to the Collector from the decisions of his subordinates; by making it clear that where a man is both agriculturist and trader, only his trade earnings are liable; and by fixing a minimum limit of incidence. The Local Government has also proposed to the Government of India that the stamp upon all petitions of objection and appeal under this Act should be limited to one anna. In some points we have not been able to accept the views of the Association, and in some we find that they had misunderstood the effects of the provisions of the Bill. For instance, the Bill does *not* make it compulsory upon Government to work the tax through municipalities in the interior. It is entirely optional with Government to use this agency in the mofussil. It may employ municipal agency in drawing up the lists and not in collecting the tax, and it may refrain from employing it altogether. Government will be guided entirely by the circumstances of each town in deciding how far to make use of these sections. It is only in Calcutta that it is imperative to use the municipal machinery, and this will probably be more agreeable to the trade of Calcutta than assessment at the hands of the

The Hon'ble Mr. Mackenzie.

Collector. In no case will the municipality have any interest in screwing up the tax, as the Association seem to fear. The amount of tax on each man will be settled before any bargain is made with a town for collections.

We have also received a communication from the Chamber of Commerce bringing to notice a doubt as to whether stevedores are taxable as cooly suppliers under the municipal schedules. We have cleared this up as regards the present Bill by specially naming that class under schedule B.

With these remarks, I have the honor to move that the Report of the Select Committee be taken into consideration."

ADJOURNMENT OF THE COUNCIL.

His Honor the President said that since he had fixed that day for the meeting of the Council, the sitting of the Council of the Governor-General had been postponed from Wednesday last to 12 o'clock of that day, and it was necessary that he, and also the learned Advocate-General, should be present at the meeting of that Council. Many of the amendments which his hon'ble friend Baboo Kristodas Pal intended to move in the License-tax Bill involved questions of policy which would be explained that day in the Council of the Governor-General in reference to the Bill for a license-tax on trades in the North-Western Provinces, and he thought his hon'ble friend should reserve the consideration of his amendments until after he had had an opportunity of hearing the exposition of the views of the Government, which His Honor hoped would satisfy him. Some of the amendments affected questions of Imperial policy which it was perhaps not within the power of this Council to discuss, and it would be more convenient if those questions were not brought forward here.

Anyway, His Honor was sure that the hon'ble member himself would wish, before bringing forward his amendments, to hear anything that might be said that day in the Council of the Governor-General on the questions to which his amendments related. Therefore, on the whole, he thought it would be better to adjourn the Council to 11 o'clock on Thursday next.

The Council was adjourned to Thursday, the 14th instant, at 11 A. M.

Thursday, the 14th February 1878.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble H. J. Reynolds,
The Hon'ble A. Mackenzie,
The Hon'ble S. C. Bayley,
The Hon'ble Baboo Isser Chunder Mitter, Rai Bahadoor,
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor,
The Hon'ble Nawab Meer Mahomed Ali,
The Hon'ble H. F. Brown,
The Hon'ble F. Jennings,
and
The Hon'ble Rajah Pramatha Natha Roy, Bahadoor.

POWERS OF SETTLEMENT OFFICERS AS TO ENHANCEMENT OF RENT.

The Hon'ble Mr. Reynolds postponed the motion which stood in his name, that the Bill to define and limit the powers of settlement officers in respect to the enhancement of rent be further considered and passed.

LICENSE TAX ON TRADES, DEALINGS, AND INDUSTRIES.

The Hon'ble Mr. Mackenzie moved that the report of the Select Committee on the Bill for licensing trades, dealings, and industries within the territories subject to the Lieutenant-Governor of Bengal be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

On the motion of the Hon'ble Mr. Mackenzie the following paragraph was added to section 1:—

Application.

"Parts I, II, and V of this Act apply to all the territories subject to the Lieutenant-Governor of Bengal, including the town of Calcutta; Part III applies to all such territories, except the town of Calcutta; and Part IV applies only to the town of Calcutta."

The Hon'ble Baboo Kristodas Pal moved the insertion, after the word "land" in line 6 of section 4, of the words "or to any person who may receive rent in agricultural produce" The object of the amendment, he said, was to exclude persons who depended for their livelihood upon agriculture or the rent of land. But as the words of the section stood the receiver of rent did not come within the scope of the section. In many cases the rent of land was paid in kind, and the rent-receiver had to sell the produce so received by him in order to realize his rent. He might not keep a shop or stall for the sale of such produce, but he had nevertheless to sell the produce; and in the same spirit in which the cultivator who had to sell the produce of his cultivation was not taxed under

this Bill, the rent-receiver who had to sell the produce which he received from the cultivator in payment of rent should not be taxed. It was in that view that this amendment was proposed.

After a slight discussion, on the suggestion of the HON'BLE MR. MACKENZIE the following words were added to section 4, in lieu of the words proposed by the mover of the amendment:—

"or to any receiver of rent in kind in respect of the sale of produce received as such rent."

On the motion of the HON'BLE MR. MACKENZIE the following words were added to section 10:—

"The Local Government shall have power to declare what shall, for the purposes of this Act, be deemed to be the language of the district."

The HON'BLE MR. MACKENZIE moved the insertion, after the word "person" in line 1, section 13, of the word "firm," and also the omission of the last sentence of the same section, "but each member of a firm shall be chargeable with reference to his individual share of the earnings of such firm," and the substitution for it of the following words:—

"And in the case of a firm, payment by any one of the partners shall, for the purposes of this Act, be considered payment by the firm."

He said that, when he introduced the Bill, he stated that the tax was not to be a tax upon households, firms, or partnerships, but upon individuals. That principle had been adopted originally to avoid complications in the interior, where the fact of partnership was often difficult to settle, being a matter rather of status than of contract. The Select Committee had adopted and retained the principle, because it had the practical effect of making the tax upon licensees of the first class assimilate in weight of incidence to the tax upon licensees of the lower grades. Objections had, however, been taken to the provision within the last few days, on the ground that it tended to convert a license into an income tax. The Council would gather from what he said at its last meeting that he did not personally feel pressed by the arguments adduced, depending for their value, as they did, upon the special meaning to be attached to the terms "license tax" and "income tax;" but the Government deemed it desirable to keep this Bill, as a Government measure, upon the basis of those passed for Upper India in the Supreme Council, at least so far as this point was concerned, and therefore he brought forward this amendment.

The HON'BLE BABOO KRISTODAS PAL said he did not object to the amendment, but he submitted that it would be consistent if the same principle were extended to payments by Hindu joint families. The inequality in the incidence of the tax was made still more apparent than before by the provision now proposed to be introduced. A person who carried on business in joint partnership would now avoid personal liability by means of one payment for all the members of the firm, and the reason for the introduction of this provision was that the capital with which they traded was joint. Now, poor artisans, whose sole capital was their skill and labour, though they might form members of a joint undivided family, would have to pay under the law a personal tax—that was

to say, a fee for each member of the family, though their individual gains went to a common stock, and the joint family was supported with the earnings of all the members of it. When the principle of personal liability was introduced in the Bill and also discussed in Select Committee, he understood the reason to be that by recognising the personal liability of the higher classes of merchants and traders who would be liable to the rates, the tax would comparatively fall much more lightly on the poorer than on the richer classes, and the inequality in the incidence of the tax would thus be adjusted. It was, however, now proposed, with regard to the higher classes of assessees, to withdraw the principle of personal liability, but it remained intact as regarded the poorer classes. It was true that the artisans, though forming members of a joint family, might carry on individually their own separate industries. But as members of a joint family, he submitted that they occupied the same position which the partners of a firm did. And it being considered just to recognise the principle of joint liability in the case of a partnership firm, he thought it would be equally just to recognise the same principle of joint liability in the case of members of a joint undivided family. He believed that this principle was recognised by the last Income Tax Act; and holding as he did that it was a correct principle, he desired to see it recognized in this Bill; he would therefore move the insertion of the words "or joint family" after the word "firm" in the first and third lines of the amendment moved by the hon'ble mover of the Bill.

The HON'BLE MR. JENNINGS observed that the amendment of the hon'ble mover seemed to meet the difficulty which had been felt in reference to the assessment of the individual members of a partnership firm, and for his part he would give it his unqualified approval.

The HON'BLE MR. BROWN said he thought the hon'ble member might be congratulated upon having removed a very objectionable feature from the Bill The provision under which each member of a firm would have been chargeable with reference to his individual share of earnings, besides multiplying the burden in a manner such as, he ventured to think, was never contemplated by the framers of this Bill, would have introduced the very element and provoked exactly that species of discontent which the originators of the measure had shown special anxiety to avoid. By replacing in section 13 the wording of the corresponding section of the Northern India License Act, the hon'ble member had, in this particular, saved a good Bill from being spoilt. He bore in mind His Honor's admonition that it was not within the province of this Council to discuss questions of policy; and with regard to the details of the Bill, he wished only to say that he did not quite agree with the increase from Rs. 200 to Rs. 500 in the assessment of the higher classes of traders—an alteration which, bearing in mind the cogent reasons which in an earlier stage of their proceedings were urged against such change, would, he took the liberty to think, have been better left alone. At the same time he did not think that, under the present revised conditions, the enhancement would press very hardly upon the class it affected; he had not moved any amendment to the provision, and he did not suppose it would meet with more serious objection than that which must naturally attach to an admittedly unnecessary imposition.

The Hon'ble Baboo Kristodas Pal.

Upon the whole he was glad to be able to say that he thought it would have been difficult to have contrived means for providing the requisite funds by a measure less objectionable than that now before the Council. The loyal readiness to respond to this call of the State had already, upon a previous occasion, been expressed in eloquent terms by the hon'ble member to his left on behalf of his countrymen in Bengal, and he felt sure he was expressing the sense of the European community of this city by giving similar testimony on their behalf.

The HON'BLE BABOO ISSER CHUNDER MITTER said he had one observation to make with reference to the amendment proposed by his hon'ble friend opposite (Baboo Kristodas Pal). The hon'ble member in charge of the Bill had, it would be seen, an amendment to put forward with reference to clause 3 of section 39, which he thought would quite meet the objections which had been taken. BABOO ISSER CHUNDER MITTER thought that when the members of a joint family conducted together the same business, they would come under the same category as members of a partnership firm; but where they conducted different businesses, and followed different occupations, he did not see why they should not be separately taxed under this Bill.

The HON'BLE MR. MACKENZIE observed that it appeared to him that the hon'ble member who last spoke exactly hit the objection to the acceptance of the amendment moved by the hon'ble member opposite (Baboo Kristodas Pal). The members of a partnership or firm, whose relations depended upon definite contract, were well known and might be ascertained. But commensality, and not joint working, was the bond of connection between the members of a joint Hindu family. The members of such a family might be scattered widely apart and pursue various occupations; some of them might be engaged in trade, some might be artisans, and some in the Government service; and it would therefore be impossible, if the Hon'ble Member's suggestion were adopted, to assess the tax with any certainty in any such case. The Select Committee had met the case of the Act operating oppressively in respect of members of the same family by providing that the Government might frame rules for modifying (that was to say reducing) the fees chargeable to them when living and working together, and MR. MACKENZIE thought that would practically meet the whole object of the hon'ble member who had moved the second amendment.

After some further discussion the Hon'ble Baboo Kristodas Pal's amendment was negatived, and the Hon'ble Mr. Mackenzie's motion was carried.

Section 19 related to appeals.

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words, "or to some officer specially empowered by the Local Government in this behalf," in lines 5 to 7, and the substitution therefor of the following:—

"Who may either dispose of it himself or may refer it for disposal to a bench of not less than three Municipal Commissioners of the town in which the person making the appeal may ordinarily reside."

He said it might be in the recollection of the Council that when the Bill was introduced he raised the question of appeals, and that it was conceded that an appeal should be allowed to the Collector from the decision of officers

subordinate to him. The Select Committee were agreed upon that point, but considering that there might be cases in which the Collector might not have sufficient time to hear appeals, the majority provided that the Government should be empowered to appoint special officers to hear appeals. Now, his object in proposing that the Collector should hear appeals in all cases if practicable, was chiefly that he should have a direct personal interest in the working of the law. If the appeals were heard by himself he would be in a position to know how the Act was practically working, but if appeals were referred by him to another officer, his personal knowledge would not be improved. And as it was very desirable that the responsible officer of the district should be thoroughly acquainted with the working of the law, BABOO KRISTODAS PAL thought every opportunity should be given to him for that purpose. It might be said that, in preparing the list and other initiatory work, the Collector would direct his subordinate officers and thus acquire the necessary knowledge. But the Collector would perhaps issue general instructions, and the subordinate officers would be charged with the initial work. It was one thing to work the law with one's own hands, and another thing to do it by means of subordinate agency; and he for one was persuaded that the people would have confidence in the working of the law if it were directly supervised by the Collector. For these reasons he had suggested that appeals should in all cases be heard by the Collector. But it was pointed out to him that in large districts, such as the 24-Pergunnahs for instance, the Collector was overwhelmed with work, and he might not be able to find time to hear appeals; and it was therefore necessary to assist him by the appointment of special officers for the hearing of appeals. In order to meet such special cases, he would suggest that the Collector in any such district should be authorized to refer appeals to a bench of three Municipal Commissioners. The only objection to such a course he had heard was that the Municipal Commissioners might not be quite trustworthy; and that, as the Government wished that the law should be properly enforced, the Collector or some other officer would be the proper person to hear appeals. With due deference to the hon'ble mover of the Bill, BABOO KRISTODAS PAL submitted that if the Collector were vested with the discretion of selecting particular Commissioners for hearing appeals, the agency employed would be such as to obviate the objection the hon'ble member had taken. Besides, if the Municipal Commissioners were fit to administer the municipal funds, to hear appeals in cases of municipal assessment, and to do all other work in connection with municipalities, he did not see how they could be considered unfit to hear appeals under this Act. In the suburbs of Calcutta and in Howrah, and in other large towns, there were also Deputy Collectors of experience who were members of the Municipal Commission, and if the Collector wished, he might associate one of the Deputy Collectors with two non-official Commissioners to constitute a Bench for the hearing of appeals under the Act. All that he would ask the Council to consider was that whatever agency was provided by law for the hearing of appeals, it should be such as to command the confidence of the people; and if the Collector did not in special cases possess

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the necessary leisure to hear appeals, he thought a bench of Commissioners to be selected by the Collector would command confidence. On these grounds he thought that the hearing of appeals should be delegated to some other authority only when the Collector had not the necessary time to hear them himself, and that a bench of three Municipal Commissioners should be such authority.

The HON'BLE MR. REYNOLDS said it did not appear to him that the amendment would be an improvement upon the procedure provided by the Bill, or be calculated to effect the object the hon'ble member had in view. The amendment merely provided for the hearing of appeals in mofussil towns; so that it would be necessary that the Collector himself should hear appeals in all other places—a work for which the Collector could hardly find sufficient time. On the other hand, the hon'ble member was quite willing that the Municipal Commissioners, who should hear appeals, should be selected by the Collector himself. But in that case there might be just as much objection to the hearing of appeals by a bench of Commissioners so constituted, as if the appeals were heard by officers specially appointed by the Government, which officers would be appointed on the recommendation of the Collector. MR REYNOLDS therefore did not think that the amendment would be an improvement upon the section.

The HON'BLE MR. MACKENZIE said he concurred with the last speaker that the amendment under consideration was hardly called for, and was rather inconsistent with the professed wish of the hon'ble member opposite, that the Collector should be compelled to make himself acquainted with the working of the Act by conducting its operations personally. The effect of the amendment, if adopted as it stood, would be to nullify by a side wind the proposals of the Select Committee. For the municipalities in the mofussil were few and far between, and the Collector would himself have to hear all appeals in places where there was no municipality. At the same time he agreed that we should as far as possible avail ourselves of the agency of Municipal Benches for the hearing of appeals under this Act where municipalities existed, and he was willing to give power to the Collector to refer appeals to a Municipal Bench. But he was not sure that this was the best place in the Bill in which to put the amendment. He thought the amendment would come better under section 27, which related to municipalities, by adding a provision that the returns, when prepared by Municipal Commissioners, should be deemed to be the list under section 10, and that the Collector should have the power of referring appeals against such list to a bench of three Commissioners selected by himself. MR. MACKENZIE thought that that would meet the hon'ble member's wishes.

The amendment was then by leave withdrawn, on the understanding that an amendment of the nature of that stated by the hon'ble mover of the amendment would be introduced in section 27.

Section 22 provided for the recovery of fees and penalties.

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words "either as if they were arrears of land revenue, or." The effect of the amendment, he said, would be this, that all sums due on account of license-tax should not be recoverable as arrears of revenue, but by sale and distress of the

moveable property of the person liable to the tax. He thought it would be admitted that if a person was assessed to the annual sum of Rs. 50 for license tax, he was possesssed of goods and chattels of sufficient value to satisfy the demand of the Government. A tax of Rs. 50 per annum implied an income of Rs. 2,500, and in any trade which would yield an annual income of Rs. 2,500, surely the stock-in-trade would be of sufficient value to satisfy the demand. It would, he thought, be inconsistent with the principle recognized by this Council, in the case of the Road Cess Act and the Public Works Cess Act, to realize arrears of license tax by the sale of land or by turning a man out of his hearth and home. If there had been the merest shadow of a difficulty in realizing the tax in the cases to which he had referred, he would not have considered it proper to offer any objection to the provisions of this section. But as no such difficulty had been experienced, and as he was perfectly satisfied that the stock-in-trade of a person who was assessed to a tax of Rs. 50 would be considerably more than sufficient to meet the demand, he thought it would not be right to give power of this kind for the recovery of the tax, the goods and chattels of the assessee being more than sufficient for the realization of the amount due.

The Hon'ble Mr. Mackenzie said he would call the attention of the Council to the fact that, under the Bill passed by the Council of the Governor-General, arrears of license tax were made recoverable as arrears of land revenue. The Select Committee of this Council had modified that enactment, and provided that arrears of the tax should be so recovered only when the amount exceeded Rs. 50; and his own personal experience in the mofussil had convinced him that it was often impossible to recover such demands by the sale of moveable property, and that it was necessary, for the safety of the revenue, that there should be some more certain means of recovering arrears of the tax.

The Hon'ble Mr. Reynolds said that as the hon'ble mover of the amendment had stated that he would not have proposed it if there had been a shadow of a difficulty in recovering arrears by the sale of moveable property, he hoped the hon'ble member would withdraw his amendment when it was pointed out that the recovery of sums due above Rs. 50 did not only include the assessment of tax on incomes above Rs. 2,500, but it also included the amount of fines, which might come to three times the amount of the annual license tax, and would thus cover the recovery of sums from persons whose earnings were considerably below Rs. 2,500.

The Hon'ble Baboo Kristodas Pal said that the hon'ble mover of the Bill had observed that from his experience as a revenue officer, difficulty was really felt in the mofussil in realizing Government demands without the sale of immoveable property. Now, the Road Cess Act, as Baboo Kristodas Pal had observed, had been in operation since 1871, and he believed the revenue officers had with singular unanimity testified to the smooth working of the Act; and he had not heard any question raised as to the difficulty of realizing the road cess without the sale of the immoveable property of defaulters. Now, in the case of traders the difficulty would be still less, because the trader must have the stock with which he carried on his trade, and it could not be concealed;

The Hon'ble Baboo Kristodas Pal.

it was required in the pursuit of his daily avocations; and if a demand of Rs. 50 for license tax could not be realized by the sale of his stock-in-trade, BABOO KRISTODAS PAL thought that such a man ought not to be assessed at all. Then the hon'ble member who spoke last had pointed out that sums which might be realised under section 22 would include not only the amount of the tax, but also penalties, and that in some cases the amount of penalties might be twice the amount of the tax. Admitted. Still, the difference between Rs. 50 and the earnings which would carry a tax of, say, Rs. 16 or Rs 20 was so great that the stock-in-trade of the licensee ought to be sufficient for the recovery of the arrear; and if the stock-in-trade was not sufficient, then it was clear that the man should not be taxed at all. It would be simply cruel to turn a man out of his hearth and home when he had not the means to pay the license tax. To suppose that he could conceal his goods and still carry on his trade would be an arbitrary assumption; the man must live by his trade, and if he traded, then he must keep his shop open.

HIS HONOR THE PRESIDENT said that he was unable to support the amendment. He understood his hon'ble friend to say that if there had been any difficulty in collecting the road cess or the public works cess, he should consider it a valid reason for retaining the provision as it stood in the Bill. HIS HONOR must ask him to accept his assurance that with reference to both those cesses the one great difficulty which had been represented from every quarter was the impossibility of collecting those taxes under the present law, and the absolute necessity of altering the law as soon as possible. He was overwhelmed with applications from all quarters in that respect, and although he had abstained for some time from proposing any alteration in the law, in order to see whether it was possible to avoid the necessity for an amendment, there was very little reason to suppose that he could continue to do so much longer. And he had deferred bringing in a Bill for the amendment of the law in consequence of these difficulties until after exercising the utmost patience; until he had seen whether, with a little more time and trouble, we might not be able to avoid proposing any alteration of the existing law. He was certainly under the impression that the one difficulty which was felt by all who had to administer the law was the absolute impossibility of recovering arrears by any system of distress and sale of moveable property.

The Council then divided:—

Ayes 3.	*Noes* 7.
THE HON'BLE RAJAH PRAMATHA NATHA ROY.	THE HON'BLE MR. JENNINGS.
" NAWAB MEER MAHOMED ALI.	" MR. BROWN.
" BABOO KRISTODAS PAL.	" BABOO ISSER CHUNDER MITTER.
	" MR. BAYLEY.
	" MR. MACKENZIE.
	" MR. REYNOLDS.
	" THE PRESIDENT.

So the amendment was negatived.

The consideration of the proposed amendment to section 28 was postponed until after the consideration of the amendment to section 30.

The Hon'ble Baboo Kristodas Pal moved the omission from the end of section 30 of the following words:—

"The said Commissioners or Magistrate may also appropriate any part of the revenues of their municipality, station, or union, for the payment of any sum leviable from it under section 28; and if the sum so leviable is not paid at due date, the Local Government may order it, or any part of it, to be deducted from any funds standing to the credit of the municipality, station, or union in any Government treasury."

He thought it would not be conducive to the interests of municipalities to make them contractors for the collection of the license tax in the manner proposed in the Bill. He was quite aware that it was not obligatory on the Government to avail itself of the agency of municipalities in the assessment or collection of the tax. In regard to Calcutta alone was it made imperative. But as the Government might at its discretion avail itself of the municipal agency, he thought it would only be fair that a municipality, when required to collect the tax, should only serve as the collecting agency, and not act as contractor, in default of the performance of whose contract the municipal funds would be liable to seizure. Perhaps in practice the Government would prefer to act independently of mofussil municipalities; but where it might be deemed otherwise, he did not see why the Government should not in the usual way give a percentage to municipalities for the expense and trouble of collection. If municipalities should enter into contract, or take a farm of the collections, and if they were told to recoup themselves for loss of time and trouble and expense incurred by any excess collections which might come to them over and above the sum stipulated for by the Government, he thought the municipalities would be tempted to work the law in such a manner as to prove oppressive to the people in order to make it productive to themselves. He admitted that where it might be necessary to employ the agency of municipalities for the collection of the tax, it might conduce to economy on the part of the Government. But it was not clear why the Government should seek to effect economy by burdening the Municipal Commissioners; for if the Commissioners were remiss in the collection of the tax, the rate-payers would suffer. On these grounds he would suggest that wherever the Government availed itself of the municipal agency, it should give a remuneration in the shape of a percentage on the collections, but in no case should the municipal funds be rendered liable to attachment for the realization of the license tax.

The Hon'ble Mr. Mackenzie observed that the hon'ble member was labouring under a misapprehension. The ordinary course of procedure would be very much what the hon'ble member wished. The Collector might call on a municipality to prepare a list of licensees, but the final settlement of the tax in each man's case would rest with the Collector. The gross demand upon any municipality would only be the sum of the individual assessments thus determined, and from such gross demand Government would deduct a percentage to be allowed to the town for expenses of collection, risk and trouble. No town would be able to interfere to raise the assessments of individuals. But when the sum to be paid by any municipality was once ascertained, it was proposed to leave an option to the municipality of recovering

the tax as assessed, or of providing any portion of it from their ordinary municipal funds. They would thus be able, if they chose, to relieve certain classes of their assessment—a provision rather in the interests of the poor than against them. There might not be many towns in Bengal that could afford this, but the provision was harmless. When, however, it came to a question of how Government should realise the contract sum accepted by any town, Government must insist in the interests of the public revenue on having a power of recovering it without fail. It could not place itself absolutely in the hands of Municipal Committees, or run any risk of suffering from their laches.

The HON'BLE BABOO KRISTODAS PAL said his hon'ble friend, the mover of the Bill, had observed that the system of contract which the Bill permitted was in the interest of the poor, and that it ought to be in the option of a Municipality which had a surplus in hand to pay the amount of the tax out of such surplus. None knew better than his hon'ble friend that very few Municipalities, in fact scarcely any in Bengal, had such an overflowing treasury as to be able to pay off the license tax out of its surplus on behalf of the people residing within the limits of the municipality; and therefore to justify the provision on such an imaginary ground was, he could not help saying, begging the question. Moreover, he did not see why municipal funds, which were paid by the rate-payers, should be devoted to the payment of the license tax, as if it were the personal property of the Commissioners. The Commissioners might be very remotely considered as the representatives of the rate-payers of the municipality, they being nominees of Government, and if they did not do their duty in collecting the license tax, why should the municipal fund be made liable? He thought the justice of the provision was very questionable.

The Council then divided:—

Ayes 4.	*Noes* 6.
THE HON'BLE RAJAH PRAMATHA NATHA ROY.	THE HON'BLE MR. JENNINGS.
" MR. BROWN.	" BABOO ISSER CHUNDER MITTER.
" NAWAB MEER MAHOMED ALI.	" MR. BAYLEY.
" BABOO KRISTODAS PAL.	" MR. MACKENZIE.
	" MR. REYNOLDS.
	" THE PRESIDENT.

So the amendment was negatived.

To section 28, on the motion of the HON'BLE BABOO KRISTODAS PAL, the following words were added:—

"after such deduction for necessary expenses as the Local Government may fix."

The HON'BLE BABOO KRISTODAS PAL was about to move that the following be substituted for section 37:—

"The nett amount of all fees and penalties paid or recovered under this Act, after deducting the expense of collection, shall be carried to a separate fund, and shall be applied towards the payment of interest due upon the famine loans of 1874-75, and of 1877-78, and towards the redemption of such loans in such manner as the Governor-General in Council may direct. An annual account of such payments shall be published in the *Calcutta Gazette* for general information."

This, he said, constituted the most important section in the Bill. It referred to the appropriation of the proceeds of the tax, and with regard to it, it was expected that some light would be thrown in the other Council. That light had now been vouchsafed, and he left it to hon'ble members to say whether they considered the light given sufficient for the purposes of the Bill. For his part—

His Honor the President was of opinion that the subject which the hon'ble member wished to discuss was beyond the scope of the Council. Was it then useful to take up the time of the Council with any debate on the point? It would certainly place this Council in a false position were they to sit in judgment on the acts of the Governor General's Council.

The Hon'ble Baboo Kristodas Pal inquired whether this Council was not competent to discuss the question.

His Honor the President replied that they could discuss it, but it would lead to no practical result, and it would therefore be a mere waste of time.

The Hon'ble Baboo Kristodas Pal considered that when the people had been called upon to pay the interest on money to be expended for famine works—

His Honor the President said he was not aware that there was anything before the Council to show that that was the case. The Government of Bengal had been asked to levy a certain sum of money in accordance with a scheme laid down by the Government of India for meeting the cost of or preventing if possible future famines, and the sanction of the Governor General had been obtained to the introduction of a Bill for that purpose and not for raising money to pay off old loans.

The Hon'ble Baboo Kristodas Pal said that his authority was no less a one than the statement of the Hon'ble the Financial Member himself, and the preamble to the Bill. It was true that there were no papers before this Council on the subject, and as His Honor the President was unwilling that the matter should be discussed, he would not press his remarks.

His Honor the President said he did not wish to stop his hon'ble friend, but he had no objection to take the sense of the Council as to whether the discussion on the subject should go on. Under no circumstances could such a discussion lead to any practical result or consequence, and therefore it seemed very desirable to avoid it.

The Hon'ble Mr. Bayley said that if the hon'ble member withdrew his amendment and admitted it was *ultra vires*, there was no necessity for him to tell the Council the reason why he did so.

The motion was then by leave withdrawn.

The Hon'ble Baboo Kristodas Pal said that on the same ground he proposed to withdraw the motion, of which he had given notice, to insert the following section at the end of the Bill, namely—

"This Act shall be in force for five years from the date on which it may be published in the *Calcutta Gazette*, with the assent of the Governor-General."

His object in proposing that amendment was to assert the propriety of limiting the action of the Bill to five years, with a view to give time to Government to retrench expenditure, and at the end of five years to allow this

tax to lapse. But this also involved a question of policy; and on the ground upon which he had withdrawn the last amendment he would also withdraw this one.

The amendment was by leave withdrawn.

Section 39 empowered the Local Government to make rules for certain purposes.

The HON'BLE BABOO KRISTODAS PAL moved to omit clause 1 of the section, which stood thus—

"for defining more precisely the classes of persons liable under this Act."

He was of opinion that this clause trenched on the province of the Legislature: the class of persons to be taxed should be defined by legislative enactment and not by executive orders of the Local Government.

The HON'BLE MR. MACKENZIE explained that the Government could not by its rules bring classes of persons under the operation of the law who were not carrying on trades, dealings, or industries. In all measures of taxation the Government had either explicitly or implicitly reserved power to exempt certain classes from their operation. The object of the provision was to prevent the law from operating oppressively on any classes of persons who the Government might think ought not to be subject to the tax. It was a power of exemption which the Government might exercise without any provision of law, but it was considered desirable for the sake of symmetry to provide for this object by executive rules framed under the sanction of the law.

The motion was put and negatived.

On the motion of the HON'BLE MR. MACKENZIE the word "reducing" was substituted for the word "modifying" in clause (3) of the same section.

The HON'BLE MR. MACKENZIE said that he had received a communication from some members of the Calcutta Trade's Association, who were doubtful whether they would be liable to the tax as wholesale dealers or as shop-keepers. They were taxed at present under the Municipal Act as shop-keepers, and the intention of the Bill was to keep to the principle of that schedule. The question of whether a man was a wholesale or a retail trader was one of fact. Any person who sold goods for cash by retail was certainly a retail trader, however large his occasional orders might be. To make it more clear that under Class I. it was only meant to touch wholesale business of all kinds, he would move that Class I in Schedule A be altered so as to stand thus—

Schedule A, Class I.—"Every joint-stock company; every banker; every wholesale merchant, dealer, commission agent or manufacturer; every professional money-lender; every ship-owner; and every mill-owner, or screw-owner."

The motion was agreed to.

On the motion of the HON'BLE MR. MACKENZIE the words "engaged in any trade, dealing, or industry" were substituted for the words "engaged in trade, or commerce" in Classes II, III, and IV of the same Schedule.

The HON'BLE MR. MACKENZIE then moved the substitution of the following for Class I of Schedule B:—

Schedule B, Class I.—"Every joint-stock company; every banker, shroff, or banian; every wholesale merchant, dealer, commission agent, or manufacturer; every builder; every

contractor; every carrying company; every owner or farmer of hauts or bazars; every owner of cotton, jute, hide, or other screws; every ship-owner or dock-owner, or owner of chowks; and every auctioneer."

On the motion of the HON'BLE BABOO KRISTODAS PAL, the following memorial, which had been received from certain owners and farmers of hauts and bazars, was read:—

"That your memorialists observe with regret that in Schedule B of the License Tax Bill now before your Honor's Council 'owner or farmer of hauts and bazars' is included in Class I as being a person carrying on "trade, industry, or dealing.

"Proprietors of bazars or markets are, as your Honor in Council is well aware, simply owners of land, who charge rents for the use and occupation of the grounds or buildings thereon by vendors of articles. They do not carry on any 'trade, dealing, or industry;' and as land has been specifically excluded from the scope of this Bill, your memorialists fail to perceive why owners and farmers of hauts and bazars in Calcutta have been included in the Schedule. They may observe that they had not been included in the License Act of 1867 or the Certificate Act of 1868.

"It is true that the owners and farmers of markets are subject to the municipal license tax, but the reasons and objects of the municipal license tax and provincial license tax are different. The municipality renders conservancy service, and employs a sanitary agency for the examination of articles exposed for sale in a market, and it is therefore meet that the proprietors of markets should be made to contribute to the municipal fund. But the provincial license tax includes within its purview trades, dealings, and industries, and as ownership of land or house, whether used for a market or any other purpose, does not fall within the meaning of the License Bill, it cannot be consistent with the declared policy of Government to exempt land from this tax, and bring under its operation proprietors and farmers of markets in Calcutta.

"Your memorialists therefore pray that proprietors and farmers of markets be excluded from Schedule B of the Bengal License Bill."

The HON'BLE BABOO KRISTODAS PAL said the petition which had been just read sufficiently explained the reasons why proprietors and farmers of bazars should not be brought within the scope of the Bill. The avowed object of the Bill was to tax the trading classes, inasmuch as the landed classes had been reached under the Public Works Cess Act. Now, the owners and farmers of markets could not under any construction of the words "trades, dealings, and industries" be taken to fall within that category, and as the Council had thought fit not to include the landed classes in the territories subject to the Government of Bengal within the scope of the Bill, he did not think it right or proper to include the proprietors and farmers of markets in Calcutta. It was true that they were included in the schedule of the Calcutta Municipal Act, but that, he submitted, was no ground for including them in this Bill. As explained in the memorial which had just been read, there was good reason why the owners and farmers of markets were included in that Act, because special services were rendered by the Municipality to those proprietors, namely, by conservancy arrangements and by the inspection of the produce sold in and the sanitary condition of the markets by the Health Officer's Department, and also by the general improvements made in the town. But these considerations did not apply to the imposition of this license tax, and as no class of landed proprietors was included within its scope, he thought that the proprietors and

farmers of markets in Calcutta should be similarly exempted from its operation, and he would therefore move the omission from Class I, Schedule B, of the words "every owner or farmer of haùts or bazars."

His Honor the President observed that the owners and farmers of markets were exempted from assessment under the Public Works Cess Act, and now wished to be exempted from the License Act. They wished to escape as landowners from the one, as inhabitants of towns from the other. Looking at the names attached to the memorial, he could not say that they were persons who could properly claim to be exempt from special taxes to which all classes having a permanent interest in the country had been subjected.

The Hon'ble Baboo Kristodas Pal explained that wherever there were municipalities in the mofussil the road cess was not levied within their limits, because the construction and maintenance of roads as well as conservancy arrangements were met out of the proceeds of the municipal rates and taxes.

The Hon'ble Mr. Mackenzie observed that the simple reason why this class fell under Schedule B was that it was assessed under the schedule of the Calcutta Municipal Act and classed there with persons carrying on "Professions, Trades, and Callings." To this no objection had apparently been raised. The owners of bazars did not sublet them in specific plots for definite terms at fixed rates of rent. They often had on the contrary a direct interest in the profits derived from markets, whether they themselves collected the fees paid by the vendors therein, or had leased out their rights to such fees. It would have been considerably more to the purpose of the memorialists if they had stated that they had no interest in the profits derived from the sale of produce in the markets of which they were owners or farmers.

The Hon'ble Mr. Bayley thought that it was stretching a point to say that they, the owners and farmers of markets, took rent for the shops and stalls in such markets; he believed that they rather took fees for the sale of produce. Moreover, it should be considered that at present these gentlemen paid nothing either under the Road Cess Act, or under the Public Works Cess Act, and now it was contended that they were not to pay anything under this Bill in respect of the trades and dealings which were carried on in the markets of which they were the owners and farmers; so that they would get off in both ways. For these reasons he could not agree in the amendment which was proposed, and he would vote against it.

His Honor the President asked if the hon'ble mover of the amendment was prepared to say that the memorialists, and those whom they represented, only took rents for the shops and stalls in their markets, and not fees for the sale of produce therein. He believed that most of them, besides taking rent for the fixed shops within the markets, took a daily fee from all chance comers and squatters for permission to sell their produce, or that, if they did not take these fees directly, they farmed out the right to levy them.

The Hon'ble Baboo Kristodas Pal observed that as far as he was aware there were two kinds of market rents—first, monthly rents for shops, godowns, and fixed stalls; and secondly, a daily rent from vendors of such articles as vegetables and fish, who were not regular in their attendence at the market. Generally

rents were received in money; sometimes in kind. But in whatever form it was taken, it was rent and not profits on the sale of articles; and, as he had before explained, the reason why the owners and farmers of markets were included in the schedule of the Calcutta Municipal Act was that the Municipality rendered special services, that was to say by conservancy arrangements, the inspection of articles sold in the markets, and by general sanitation.

The HON'BLE BABOO ISSER CHUNDER MITTER said it seemed to him very doubtful how these owners and farmers of markets came to be included within the list of professions, trades, and callings specified in the schedule to the Calcutta Municipal Act; but the fact was there they were. He was not quite sure whether the farmers of hauts and bazars did not derive some profit from the sale of produce in them. In all markets the vendors had to pay something to the farmers who came in daily, but whether such payments were composed of rents, or of rent and profits, he was not quite sure. He was inclined to think that the gains of farmers were composed both of rent and profits. Municipalities in the mofussil were so small and few that it might be said that there the owners and farmers of hauts and bazars had to pay road cess in some form or other and public works cess; whereas the owners or rather farmers of markets in Calcutta had no such cess to pay. On these grounds he was not quite prepared to support the amendment.

The Council then divided on the amendment :—

Ayes 3.	*Noes* 7.
THE HON'BLE RAJAH PRAMATHA NATHA ROY, BAHADOOR.	THE HON'BLE MR. JENNINGS.
" NAWAB MEER MAHOMED ALI.	" MR. BROWN.
" BABOO KRISTODAS PAL.	" BABOO ISSER CHUNDER MITTER.
	" MR. BAYLEY.
	" MR. MACKENZIE.
	" MR. REYNOLDS.
	" THE PRESIDENT.

So the HON'BLE BABOO KRISTODAS PAL'S amendment was negatived, and the HON'BLE MR. MACKENZIE'S amendment was carried.

On the motion of the HON'BLE MR. MACKENZIE verbal amendments were made in Classes III and V of Schedule B.

The HON'BLE NAWAB MEER MAHOMED ALI said that, although he had not given notice of any amendment, he wished to be allowed to move that in section 27 of the Bill, which authorized the Collector to require returns of the persons liable to the tax from Municipal Commissioners and panchaits, all mention of panchaits should be omitted. He had no objection to such returns being called for from Municipal Commissioners; but he had seen so many instances of oppression on the poor practised by mofussil panchaits, that he must object to any such power as that contained in this section being conferred on them.

After some conversation, the motion was put and negatived.

On the motion of the HON'BLE MR. MACKENZIE the following words were added to section 27:—

"Such return, when finally accepted or settled by the Collector, shall be deemed to be the list referred to in section 10.

"On the presentation of a petition of objection under section 17 by any person entered in such list, the Collector may either dispose of it himself, or may refer it to any officer specially empowered by Government under section 19, or to a bench of not less than three Commissioners, whose decision shall be final."

The HON'BLE BABOO KRISTODAS PAL withdrew the amendment of which he had given notice, to omit from the preamble of the Bill the word "permanent" before the words "increase of the revenue."

The HON'BLE MR. MACKENZIE said he thought it would be found that nearly all the amendments made were practically verbal amendments or changes of so slight a character that it might be safely considered that, with one exception, the clauses of the Bill had been settled in the form recommended by the Select Committee. This exception was a relaxation of one of the clauses of the Bill by which payment of the tax by one member of a firm constituted payment by all of them. In adopting this principle the Council had followed the lines laid down in the Bill passed by the Governor-General's Council. But this was not such a material alteration as to make it necessary to defer the passing of it, and as it was essential that there should be no further delay in the matter, he would apply to his Honor the President to suspend the rules for the conduct of business to enable him to move that the Bill be passed.

HIS HONOR THE PRESIDENT declared the rules suspended.

The HON'BLE MR. MACKENZIE then moved that the Bill, as amended, be passed.

The HON'BLE BABOO KRISTODAS PAL said he could not allow that occasion to pass without saying a few words on the Bill. He had given his adhesion to the Bill, on the ground that the demand had been made by the Government of India in the sacred name of humanity, and, whatever differences of opinion might exist as to the form of the tax and the details of the Bill, he thought there could be but one opinion as to the necessity for raising the money, and the obligation resting upon the people to respond to the call thus made upon them. But, in the progress of the Bill, circumstances had transpired in regard to which he considered it his duty to protest against the passing of the Bill.

He thought that the Government owed it to the people over whom it held sway to explain whether these taxes should be a permanent burden upon them, or whether it might not be possible to remit the taxes, say at the end of five years, by making necessary retrenchments. None was better aware than His Honor that there was ample room for economy, and His Honor had himself raised his voice in the other Council in the cause of economy. If the papers were correct, he believed the Government of India was also anxious to press upon Her Majesty's Government the necessity for enforcing economy. He thought he would not be doing his own duty, as a representative of the native population in this Council, if he did not say that there was a wide feeling growing in the country that the Indian tax-payer was being sacrificed for the sake of the exigencies of the Imperial policy of England. It would not be denied that the home military charges of India had been increasing year after year against law and equity, if those charges were adjusted on a fair and equitable basis; if, again, reduction were made in the Indian army, which had been

long advocated by Government, and other retrenchments carried out, savings might be effected which would yield much more than the sums which would be produced by the new measures of taxation. Such being the case, he thought it would have been gratifying to the people, who had so loyally accepted the burden, if the Government had given them an assurance that at the end of, say, five years the new taxes would be remitted. On that ground he had proposed to move that the operation of this Bill should be limited to five years; but he was grieved to find that it was not open to him to make such a motion.

Then, when the Bill was originally introduced, its object was stated to be to save life by executing insurance works against famine; and he might say that his countrymen, whom he had the opportunity of consulting on the subject, had agreed with him that they should render every co-operation in the furtherance of that humane object. But how was that object to be brought about? They had been at first told by the hon'ble the Financial Member that the money to be raised by the new measures of taxation would be religiously applied to the execution of works in the nature of an insurance against famine; but they were now told that the Government would invest the fund in the construction of public works in the same manner as heretofore. But, had the public works hitherto executed proved an insurance against famine? He read in the last *Gazette of India* a despatch of the Secretary of State recommending the appointment of a Famine Commission, in which the Right Hon'ble the Secretary of State said—

"In the reports which your Excellency has forwarded me from time to time, I find much to lead me to believe that the very cause which produced the famine in many cases has made irrigation works wholly or partially ineffective. The same want of rain which parched the fields emptied the tanks and lessened the value of the rivers."

This opinion of the Secretary of State cleared up the point as to whether it would be advisable to spend more money or not upon irrigation works. In regard to railways, BABOO KRISTODAS PAL fully recognised their value in connection with famines. But he observed in a recent number of the *Gazette of India* that while more than fifteen millions had been spent in a few years on State Railways, the nett charge upon the Revenue, in other words the deficit upon this account, amounted to about half a million per annum; and if more money were spent upon these unproductive irrigation and railway works, there would be a larger and larger charge upon the revenues of the country. It might be that in the fulness of years some of those railway schemes might prove sufficiently productive; but the question was whether the money to be raised by proposed taxation, if invested in the extension of public works, would yield a sufficient return to meet the interest upon the loans that might be required for famine purposes once in ten years, estimated at fifteen millions.

It would have been satisfactory if the Hon'ble the Financial Member had explained what sort of works would be undertaken by the Government as an insurance against famine. But he himself raised the question and answered it in this way—"if he were asked to describe the works that would be undertaken, he could not give an exact reply." Thus the hon'ble Financial Member, though speaking as the exponent of Government, did not know what would

The Hon'ble Baboo Kristodas Pal.

be the nature of the works that would be undertaken; and yet we were called upon to impose taxes for works of which no one could be sure whether they would be a real insurance against famine or not. There were other points in connection with this Bill which BABOO KRISTODAS PAL would not touch upon here, as it would take up the time of the Council without any direct result. But upon the two grounds which he had stated, namely, that the tax was to be made permanent, and that the fund was to be applied to the construction of public works—that in fact the new tax was to be an addition to the Public Works Cess imposed last year—upon those two grounds he felt it to be his duty to protest against the passing of the Bill. So far as Bengal was concerned, this measure involved a double injustice. We had been led to hope that the cess of last year would suffice for works which were intended to be in the nature of an insurance against famine, but it would be seen that such was not to be the case. Then, again, it was stated in the other Council on Saturday last that, if contingencies should arise, the famine fund might be applied to general purposes of the State; but the establishment of a statutory fund would fetter the hands of the Government, and might consequently tend to complications or additional taxation hereafter; so that practically, this tax, though originally intended for famine purposes, would be so much addition to the general revenues. He said, if the general revenues were not sufficient, the Government should have openly declared its position and called upon the community to strengthen its hands. But it was not consistent to take money for famine purposes and apply it to works which might not prove an insurance against famine, or to purposes to which the general revenues were applicable. On these grounds he considered it his duty to protest against the passing of the Bill.

The HON'BLE RAJAH PRAMATHA NATHA ROY BAHADOOR said that, before the motion was put, he would also protest against the passing of the Bill on the grounds which had been already stated by the hon'ble member who preceded him, particularly as it sought to impose a permanent tax, to which on the ground of its permanency his countrymen, as far as he could judge from the organs of native public opinion, were also opposed.

HIS HONOR THE PRESIDENT must say that he had been taken somewhat by surprise by the action taken by his hon'ble friend, because he could find no sort of justification for his change of policy in anything that had been said by the Financial Member of the Governor General's Council, or by any member of the Government of India, or by himself. He must say that he understood that the natives of Bengal, and especially his hon'ble friend, fully recognised the impossibility of the Government carrying on the large system of railway and irrigation works necessary to prevent famines in future, and of relieving future famines on the principle which no one had more loudly urged upon the natives of Bengal, without an increase of means, and that they were anxious and willing, in common with the people of other parts of India, to bear their share of the burden and place the Government in a position to obtain those means. There was no doubt that with respect to economy there was a great deal of truth in what his hon'ble friend had stated. But that was not an idea peculiar to himself It had been continually noticed by His Excellency the Viceroy,

by Sir John Strachey, by himself (the Lieutenant-Governor) and others, and it was a matter that was receiving the most earnest attention on all sides. A great part of His Honor's time was now spent in trying how far they could reduce expenditure in the administration. Expenditure in the Army and in the Home charges were matters with which it was not in his power to deal, and he doubted whether it was in the power of the Government of India to deal with it altogether. But he was sure that the subject was receiving the serious attention of the Government of India, and that the Government would do what it could in these directions. No one could be more anxious on the subject than His Excellency the Viceroy. His hon'ble friend seemed to him to draw a distinction between what he called expenditure on works for preventing famines, and expenditure on public works. His Honor must confess he could not understand what his hon'ble friend meant by works for the prevention of famine. His Honor's idea was that it meant works of irrigation in dry countries where irrigation was wanted, and works of communication, railways and feeders chiefly, which would have the effect of enabling people in parts of the country where there was a good harvest—and there were fortunately places where there were always good harvests—to transport their grain to other parts of the country where there had been bad harvests; and he could not conceive how any one who had seen what had been transpiring within the last few months could hesitate to say that, whatever had been done in Madras in the way of saving human life, had been done through the help of railways, and he could not help feeling that without those railways Madras would have been left in just as helpless a condition as Orissa was during the famine there some eleven years ago.

His hon'ble friend had quoted the remarks of the Secretary of State for India to show that expenditure upon works of irrigation was next to useless; but he had quoted a single sentence favourable to his view from the despatch on the Famine Commission and had not given a correct idea of the Secretary of State's views. His Honor found that the Secretary of State mentioned that the Government had expended sixteen millions sterling upon irrigation, and he went on to say—

"The financial results of these undertakings have varied remarkably. The earlier works, especially those which have been constructed in the localities already selected for that purpose by the earlier rulers of the country, have been singularly profitable. According to the estimate now before me, the Eastern Jumna Canal has yielded 36 per cent., and the Western Jumna 27 per cent."

No doubt, as had been observed, there had been places in which schemes of irrigation had been carried out, and had been proved to be exceedingly unprofitable. But the charge for those schemes had been already met by the Public Works Cess, and no portion of the money to be raised on the present occasion could by any possibility be expended on those unprofitable irrigation works of Orissa. As to future irrigation, it might be quite accepted as a fact that money now raised would be entirely expended upon works which were desired by the people, and upon which there would be an unquestionable return. In regard to the works of irrigation which had been proposed during His

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Honor's time, he had always refused to act until the people themselves had come forward and asked for the scheme, and the only new schemes which had been commenced lately had been the works in regard to which the people themselves had been the first to move; and in one case they had actually guaranteed the whole of the interest on the money which would be expended, and in the other case, they were still considering whether they should do so.

The question whether the money raised under this Bill was to be devoted to paying off a loan for money expended on one work or another was of very little matter. He fancied that the Government was determined to do its duty to the country, and proceed with the construction of public works; and the only question was whether they should be entirely paid for by future generations, or partly by the present generation. A certain amount would be annually expended in opening out the country by means of railways and canals, which would have the effect of making the country comparatively safe from the effects of future famines. Now, the money raised under this Bill would go to the purpose of making railways and other public works, which would otherwise have to be made from money raised by loans. Under the present system they were made by what were called extraordinary loans, which were very strictly limited to works which were of a remunerative character; and instead of raising that money, as now, by means of loans, a large proportion of it would be paid out of the revenues raised by new taxation, and the country would be saved from so much of debt, and when famine did arise would be able to borrow anything that was necessary to meet it, without adding to the debt of the country anything more than would have been added if nothing was spent for famines, and the same amount hitherto spent was spent on preventive works. It was calculated that the amount which would be thus paid off would be sufficient to meet the cost of famines when they arrived. One and a half millions loss of debt in 10 years would give the 15 millions which it was calculated might have to be spent on famine in the next ten years. And it might be hoped that if in the meantime this money so collected was judiciously invested in public works, whether they were directly or indirectly remunerative, all the horrors and much of the outlay of future famines could in time be averted. He could not conceive that his hon'ble friend really would prefer that the money should be locked up in a strong box and kept there for ten years. We would then find ourselves in the same helpless condition, without roads, canals and railways, or any means of transporting grain from one part of the country to another.

As he had said before, he did not understand to what part of the scheme his hon'ble friend objected. There seemed to him to be not the slightest difference between discontinuing to borrow money for works, which all admitted were required, and which must be made, and paying off the interest upon old loans. It seemed to His Honor a most selfish policy for this generation to throw upon posterity the cost of paying for famines which did not occur in their time, and that would be the result of meeting famines by continually, instead of yearly, raising fresh money to meet them whenever they arose. He thought the views of his hon'ble friend, which, as he said before, seemed selfish, were entertained by very few of his fellow-countrymen and by very few of the

members of this Council, and he hoped that the Bill now before them would be passed.

He understood that his hon'ble friend did not object to pass the Bill for five years, but objected to pass it without a limit of time.

The HON'BLE BABOO KRISTODAS PAL said he wished to say one word by way of explanation. He wished to point out the difference in the circumstances since the introduction of the Bill which had led him to modify his opinion in respect to it; that there was now no guarantee in the way the appropriation section was worded, and the policy which had been lately announced, that there would not be further increase of taxation when a famine should arise hereafter, there being in consequence of that policy no positive insurance against famine.

The Council then divided:—

Ayes 7.	*Noes* 3.
THE HON'BLE MR. JENNINGS.	THE HON'BLE RAJAH PRAMATHA NATHA ROY, BAHADOOR.
" MR. BROWN.	" NAWAB MEER MAHOMED ALI.
" BABOO ISSER CHUNDER MITTER	" BABOO KRISTODAS PAL.
" MR. BAYLEY.	
" MR. MACKENZIE.	
" MR. REYNOLDS.	
" THE PRESIDENT.	

So the motion was carried and the Bill passed.

The Council was adjourned to Saturday, the 23rd instant, at 11 A.M.

Saturday, the 23rd February 1878.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR.
The Hon'ble BABOO MOHINI MOHAN ROY,
and
The Hon'ble AMEER ALI.

NEW MEMBERS.

The HON'BLE BABOO MOHINI MOHAN ROY and the HON'BLE MR. AMEER ALI took their seats in Council.

POWERS OF SETTLEMENT OFFICERS AS TO ENHANCEMENT OF RENT.

The HON'BLE MR. REYNOLDS moved that the Bill to define and limit the powers of settlement officers in respect to the enhancement of rent be further considered in order to the settlement of its clauses.

The motion was agreed to, and the clauses of the Bill were settled without further amendment.

The HON'BLE MR. REYNOLDS then moved that the Bill be passed, and in doing so he said that it was a very short and unpretending measure; but he believed its operation would be beneficial, and would be calculated to remove some practical difficulties which had been felt in the conduct of settlement operations.

It might be thought that those operations were confined to so small a class of estates that no measure for their regulation could be of any great importance, or of any general interest. But it would be an easy matter to give the Bill a much wider operation than it had at present. It might be enacted that a zemindar who desired to make a re-settlement of his estate should be at liberty to apply to the Collector for the purpose, and that the Collector should thereupon be authorized to draw up a jummabandi, and to exercise all the powers conferred by law on an officer conducting a settlement. He believed he was authorized to say that if the zemindars of Bengal generally expressed a wish for such an extension of the law, the Executive Government was prepared to consider the proposal favourably. It might be found that a measure of that kind would afford a practical solution of a question which had

been much discussed during the last two years, viz. the determination of the landlord's share in the increased value of the produce of land. The law would not indeed directly determine that share; but it might be found that both parties would be willing to accept the Collector as an arbitrator, and to agree to a re-settlement on the terms which he might ascertain to be fair and just between them. It was sometimes a subject of complaint that, under the existing law, the zemindar who desired to enforce the re-settlement of rents on his estate through the agency of the courts got a great deal of law but very little justice, and MR. REYNOLDS was not prepared to say that there was no foundation for such a complaint. But it seemed likely that this objection would be removed if the conduct of these enquiries were transferred to a Government settlement officer; and he believed that such a change would be acceptable to the zemindar, and not inequitable to the ryot, for the officers of Government were always scrupulously regardful of the rights of the cultivators. It was therefore possible that this measure might eventually have a wider application than at present. But at present only those classes of estates which fell under the operation of Regulation VII of 1822, namely, estates which were the property of Government, and estates belonging to private persons, but not under permanent settlement, would come under the operation of this Bill. With these remarks he moved that the Bill be passed.

The motion was agreed to and the Bill passed.

SUITS BETWEEN LANDLORDS AND TENANTS IN CHOTA NAGPORE.

The HON'BLE MR. REYNOLDS said that in presenting the report of the Select Committee on the Bill to amend the procedure in suits between landlords and tenants in Chota Nagpore he had very little to say. The Select Committee had made very few changes in the Bill, and the changes which they had made were of little importance. The most considerable change which had been made was in sections 90 and 91, by which the Deputy Commissioner was empowered to determine the rate of interest which should run on the amount of compensation awarded by the court, the rate of such interest being fixed at twelve per cent. by Bengal Act VI of 1862, from which the provision was borrowed.

With regard to the amendments which had been placed on the notice paper, MR. REYNOLDS wished to reserve his remarks upon each particular amendment until it was brought forward. But with regard to their general tenor and scope, he might be permitted to say that the hon'ble members who had proposed those amendments seemed to him to have overlooked or forgotten the fact that in passing a rent law for Chota Nagpore, the Council was legislating for a province of which the conditions were in many respects of a special and exceptional character. It was not as if the Council had a *tabula rasa* before them. They were not at liberty to proceed upon abstract principles, and to lay down the best law possible, and then to frame the details of their measure in accordance with that ideal. If they wished their legislation to be successful, they had to consider not only what was theoretically good, but what was actually practicable, and

these considerations, he thought, had not been attended to in regard to some of the amendments. The principle which had guided the Select Committee in revising the Bill was that, when they came to any section which appeared to be of a peculiar character, as for instance such sections as 19 and 20, they referred to the opinions of the local officers, and where they found a strong and general consensus of opinion in favour of a particular wording of the law, they thought themselves bound to accept that opinion. He hoped that the same principle would be accepted by the Council in settling the clauses of the Bill.

The HON'BLE BABOO ISSER CHUNDER MITTER said that, as a member of the Select Committee, he was responsible to some extent for the shape which the Bill assumed. The law in force in Chota Nagpore was Act X of 1859, Bengal Act VI of 1862, and its amending Act; but in adapting that law to the particular requirements of the province of Chota Nagpore, the Committee had in view the circumstances of the people and the peculiar nature of the tenures which were there extant, such as the bhuinhari and mujjhus tenures. In Select Committee he had suggested some improvements, bearing in mind the discussions which had taken place in regard to the improvement of the substantive rent law. He was willing to excise the warrant clauses of the Act, or rather the clauses which related to arrest before judgment—a matter upon which there had been a strong expression of opinion by Rajah Digumber Mitter and his hon'ble friend opposite (Baboo Kristodas Pal). He also agreed with his hon'ble friend as to the necessity of an amendment of the law in regard to instalments of rent falling due, in reference to the quarterly kists for the payment of revenue, regarding which the hon'ble member on his right (Mr. Mackenzie) expressed his opinion during the early discussions on the rent law. But it was considered inexpedient to attempt to introduce these improvements in a less advanced portion of the country, such as Chota Nagpore, before they were made in the more civilized and advanced districts of Bengal Proper; and, under these circumstances, the Bill was framed so as to adapt it to the circumstances of Chota Nagpore without any attempt to introduce such improvements. The sense of the Council, he thought, might be taken whether it was proper to make such improvements in this Bill in the present state of the country to which it was to apply, or to wait until they had been introduced in the older provinces where they were more needed.

The motion was agreed to.

The HON'BLE RAJAH PRAMATHA NATHA ROY moved the introduction of the following section after section 10:—

"Every ryot is entitled to receive a correct copy of the account showing his liabilities and payments as kept in the *sherista* of the person to whom his rent is payable within a month after the commencement of the zemindari year."

He said that the system of accounts to which he referred was kept in all estates; they were kept in the form of a book, a page of which was assigned to every tenant. In it was entered the rent for which the ryot was liable for the whole year, and the amounts which he paid in on different dates were entered side by side. This account was known in different places under different

names, and were more or less varied in form; but in substance it was everywhere the same. From these accounts the jumma-wasil-baki papers were afterwards prepared; they were an indispensable companion to the *gomasta*, and without them the zemindar's work could not get on. In cases for the realization of rent, where pottas and kubooleuts existed, it was very easy to find out what the rents were. But where they did not exist—and they did not exist in most places—the courts found a good deal of difficulty in ascertaining the actual amount of the jumma; and ryots in such cases generally pleaded that they had been sued for a higher jumma than what they ought to pay. The ryot had no paper in his possession to prove satisfactorily what the actual jumma was, and his only chance of success lay in his being able to raise a doubt as to the correctness of the zemindar's papers; and if he succeeded in raising a doubt in the mind of the judicial officer as to the trustworthiness of those papers, the zemindar would have no chance of getting a decree. But if he could not do so, then the jumma claimed would be decreed. Hence it was that injustice was often done in these cases. Now, if a copy of these accounts were furnished to the ryot, he would be in a position and therefore expected to show what the actual jumma was; and if the zemindar sued him for rent which he knew he ought to pay, he would think twice before he objected to pay it. RAJAH PRAMATHA NATHA ROY thought therefore that, for the ends of justice, it would be convenient if a copy of this account were furnished to the ryot, and he therefore moved the amendment.

The HON'BLE MR. REYNOLDS said he could not accept the amendment. When it proposed to enact that every ryot was entitled to receive an account of the rent due from him and the payments made by him, it implied that the zemindar should furnish the account. From what he knew of the province of Chota Nagpore, he questioned much whether such an enactment would be practicable or workable. It would be difficult to work such a provision in the district of Hazareebagh, it would be still more difficult in Lohardugga, and almost out of the question in Singbhoom. He would further ask the hon'ble member to consider who were the ryots to whom these accounts were to be rendered; for it would be utterly useless to present a ryot whose language was Kole or Manda with a paper written in Bengalee, and to tell him that it was a statement of his account with his zemindar. The amendment seemed to MR. REYNOLDS to assume the existence of a state of things which did not exist in the province for which the Council was legislating; he therefore hoped that the Council would not agree to the amendment.

The HON'BLE THE ADVOCATE-GENERAL said the amendment appeared to him to be impracticable, having regard to the position and character of the ryots in Chota Nagpore. He would have left this amendment alone, but that he perceived that most of the other amendments of which the hon'ble members opposite had given notice depended on the same condition, namely, an advanced state of society which did not exist in the places to which this Bill would apply. He thought that under section 5 every ryot was entitled to receive a potta, and when he received his potta he would know the amount of rent he had to pay. He did not think it fair to ask the zemindar to keep the

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ryot's account for him. If, however, this amendment stood by itself, THE ADVOCATE-GENERAL would probably have offered no objection to it; but it seemed the commencement of a series of amendments which sought to import into the Bill principles which could not be carried out. The Council had already heard the remarks made by one of the hon'ble gentlemen who sat in Select Committee on this Bill, which showed that it would be better to wait for the general amendment of the rent law than to introduce a new system in a province which was the least adapted for the experiment, and he thought therefore it would be better to wait and see first how far the substantive law could be amended.

The HON'BLE BABOO KRISTODAS PAL was afraid that the object of the hon'ble mover of the amendment had not been fully understood. He believed his hon'ble friend intended to introduce this system for the protection of the ryot. It was well known that the zemindar kept papers showing the account of each ryot, and if a copy of that account was furnished to the ryot, he could produce it in court and remove all doubts as to the amount of rent due by him. Considerable misunderstandings and disputes arose in consequence of the unsatisfactory nature of the papers produced as to the amount of rent payable by the ryot and the payments made by him. The system contemplated by the amendment was analogous to the *hath chitta* system which existed in respect to dealings with petty traders and artisans: it showed the account of the persons in dealing and the payments made from time to time; so that, when it was produced before the court, it could at once see how far the account was correct. The amendment was based on that principle; and if it were introduced generally, it would remove one great source of litigation regarding the recovery of arrears of rent.

The HON'BLE MR. REYNOLDS remarked that when the hon'ble mover of the amendment stated that every zemindar kept these accounts, he was no doubt alluding to Rajshahye and the Central Provinces of Bengal generally, not to Chota Nagpore. MR. REYNOLDS believed that the introduction of the proposed provision would put the zemindar to considerable expense and trouble, and would practically afford no protection to the ryot.

HIS HONOR THE PRESIDENT said he must express his entire concurrence in the remarks which had been made by the hon'ble member on the right (Baboo Isser Chunder Mitter), who had given great attention to this Bill. He was just as anxious as any other member of the Council to see a good rent law passed for Bengal, but he must point out, and he hoped his hon'ble friend would admit, that this was not the time, nor the present Bill the place, to introduce experimental amendments of this sort. He saw that there were on the notice paper a number of amendments relating to questions of principle connected with the rent law which were still undetermined, and which were the subject of discussion even amongst the many classes of zemindars who were interested in them. Although many of the amendments of which notice had been given might be most proper and desirable if introduced into a general Rent Bill for Bengal, and no doubt would be introduced when the question came to be discussed, HIS HONOR thought they were not proper amendments to propose

with regard to a Bill which was to have operation in the most backward part of Bengal, where even the zemindars were not of the same class of people as the hon'ble gentlemen had in their minds. The condition of Chota Nagpore was really quite feudal: the people were very backward and ignorant, and many of the landholding class were quite unable to carry out the elaborate system of accounts which was proposed by the amendment. Elaborate rules were proposed as to sheristas and accounts, but some of the receivers of rent, in fact, hardly had what was known as a sherista. He thought, therefore, that the Council should be very careful, sitting there as they were in ignorance of the detailed system of that part of the country, how they laid down elaborate systems which, when put into force, it would be found quite impossible to carry into effect. He therefore felt bound to oppose this amendment, and he hoped his hon'ble friends who had given notice of these amendments would consider whether this was a proper opportunity for proposing amendments (many of which, as he had said before, might be very proper under a different state of things) for a country which was the most backward of all the districts which were under the Government of Bengal.

The motion was then negatived.

The HON'BLE BABOO KRISTODAS PAL said that after the expression of opinion which had fallen from his hon'ble friends he did not wish to move the amendment to section 12 which stood in his name, namely, to insert the following section in lieu of section 12:—

"Every ryot, on payment of any instalment of rent, shall be entitled to have a receipt, of which a counterfoil shall be kept in the cutcherry of the person to whom the payment is made, specifying the period on account of which the rent is acknowledged to have been paid. Such receipts and counterfoils shall bear consecutive numbers, and shall be bound together in books of not less than fifty receipts each. Neglect or refusal to give such a receipt shall be deemed to be a withholding of a receipt."

He might, however, explain that the circumstances of Chota Nagpore, as His Honor the President had stated, rendered it necessary that the Council should be extremely cautious in extending the system in vogue in the more advanced parts of Bengal. At the same time he wished to remind the Council that this Bill contained innovations which had hitherto been the subject of discussion, but which were now to be experimentalized upon in Chota Nagpore. For instance, no question connected with the rent law had been discussed so threadbare as the question of the enhancement of rent. But in this Bill it was provided that the question of enhancement of rent should be left entirely to the discretion of the revenue courts. In the same way the law of distraint, he believed, was withdrawn entirely under the operation of this Bill; and also several other material alterations had been introduced, such, for instance, as the fixing of rent for periods varying from ten to twenty years, and also with reference to the commutation of services on the application of the person who received rents, whether he received the rent in perpetuity or not—although the provision on this subject in the Chota Nagpore Tenures' Act applied only to rent-receivers who had rights in perpetuity. It would be thus seen that material alterations had been introduced in this Bill, notwithstanding the

His Honor the President.

circumstance that the subject of the amendment of the Rent Law was yet in the stage of discussion, and the alterations which it was proposed to make had not received the final sanction of Government. Now the Rent Acts, X of 1859 and VI of 1862 and IV of 1867 of this Council, had been in force even in the backward province of Chota Nagpore, and he submitted that those laws were sufficiently complicated; and if they could remain in force in the province for nearly twenty years, he thought that it must have made sufficient progress in the meantime to be prepared to receive the few minor improvements in legislation which were the subject of the amendments before the Council. Nevertheless, as His Honor the President seemed to think that the introduction of a more advanced system of keeping accounts might complicate matters in Chota Nagpore, he would beg leave to withdraw the amendment.

His Honor the President said he was very glad that the hon'ble gentleman had withdrawn his amendment and stated his views in the manner he had done, but in doing so he had insinuated that there was some inconsistency in accepting certain improvements of the law, and rejecting others which he desired to introduce, on the ground of their unsuitability to the province to which this Bill would apply. But His Honor submitted that there was this difference between the two, namely, that the amendments of the law which had been made in the Bill had been made in consultation and with the advice of the officers who were administering the province of Chota Nagpore, after long and careful discussion with all the subordinate officers of the province, and after it had been ascertained that they related to matters with which they could practically deal. His Honor's objection to these amendments was that we were apt to get into a discussion of matters with regard to which we hardly knew whether we were capable of dealing. A reference to sections 19 and 20 of the Bill would show how very complicated the land tenures of Chota Nagpore were. No doubt hon'ble members were better acquainted with them than himself; but he ventured to think that there were lots of tenures which they would find it difficult to explain. He therefore thought it was better to confine themselves to amendments which they had ascertained from the local officers were capable of being carried into effect. On these grounds he was glad that the amendment was withdrawn.

Section 13 provided that the ryot might, if the rent tendered by him to the zemindar be refused, pay into court, without any action being brought against him, the amount which he admitted to be due from him.

The Hon'ble Baboo Kristodas Pal moved an amendment, to the effect that such deposits should be made within one month from the date of the tender, whether a suit be instituted against the ryot or not. This amendment, he said, sought to supply an omission, the necessity of which he hoped hon'ble members would admit. At present there was no time fixed requiring the ryot to deposit the money in court after making tender of his rent; and this omission in the law led to great difficulties and complications afterwards. The zemindar might institute a suit against the ryot. The plea taken by him might be that he made tender of rent to the zemindar. He might deposit the rent after the institution of the suit, and the suit would then be barred. In the meantime the landlord went to the expense of instituting a suit, and he could not recover

if the money was deposited in court. So he thought that, if it were provided that the ryot who made a tender should within a fixed time deposit the rent in court, it would remove a fruitful source of litigation; and he hoped the Council would accept this amendment.

The motion was agreed to.

Section 14 provided the proceedings which were to be taken on the deposit of money into court.

The HON'BLE BABOO KRISTODAS PAL said that his next amendment was a corollary to the last. The section did not specify the time within which the Deputy Commissioner should inform the zemindar of the deposit of the money. He thought that notice should be issued within a reasonable time, say seven days, and he moved an amendment to that effect.

The motion was agreed to:

The HON'BLE RAJAH PRAMATHA NATHA ROY withdrew the amendment of which he had given notice in respect of sections 24, 28, 30, and 31, in favour of those which the Hon'ble Baboo Kristodas Pal had on the notice paper.

Section 24 authorized the Deputy Commissioner under certain circumstances, on receipt of a petition for the enhancement of rent, "to alter or vary the rent of the land as to him may seem fair and reasonable for such term not being less than ten nor more than twenty years" as he might think fit.

The HON'BLE BABOO KRISTODAS PAL moved the insertion of the following words after the word "reasonable," and the omission of the words "nor more than twenty years":—

"(But so that the rent shall not be less than one-fourth of the gross produce of the said land, and not more than twice the amount of the rent previously payable.")

This section, he said, made an important change in the law: it left it to the discretion of the Deputy Commissioner to enhance rent to any sum he considered fair and reasonable; it laid down no rule and required no definite data. In fact it simply sanctioned the patriarchal system under which the Deputy Commissioner might enhance rent at his own option, without being fettered by any considerations of law. He might also fix the rent for periods varying from ten to twenty years. BABOO KRISTODAS PAL thought that this absolute discretion in so important a matter was not desirable. The question of enhancement of rent had engaged the attention of Government for the last three or four years, and various opinions had been recorded on the subject. He feared that such absolute discretion might lead to abuse.

HIS HONOR THE PRESIDENT said he understood the hon'ble member was going to withdraw the amendments which contained questions of principle. The amendment now before the Council related to the proportion of produce which might be demandable as rent, and was one of the most difficult problems which could possibly be considered. He considered that it was very dangerous to deal with questions of this sort in the dark. It was a matter regarding which no two people of any class seemed to agree, even in the settled provinces; and it was certainly undesirable to begin by settling the principle in reference to these wild parts of the country, where the whole system of land tenures was

different from what it was in other parts of Bengal. He did not say that this was not a proper question to take into consideration in reference to a general amendment of the rent law, but he thought they should not begin with the wildest part of the country—a part of the country which was not even so advanced as the Sonthal Pergunnahs.

The motion was then by leave withdrawn.

Sections 27 and 28 related to claims to abatement of rent.

The HON'BLE BABOO KRISTODAS PAL said that these sections introduced a great innovation: they left everything to the discretion of the Deputy Commissioner. The amendment of which he had given notice was simply a re-enactment of section 19 of Bengal Act VIII of 1869, which bore on the subject of abatement of rent. The power to abate rent should be exercised upon valid reasons, and he therefore moved that the following section be substituted for sections 27 and 28:—

"Every ryot having a right of occupancy shall be entitled to claim an abatement of the rent previously paid by him, if the area of the land has been diminished by diluvion or otherwise, or if the value of the produce or the productive powers of the land have been decreased by any cause beyond the power of the ryot, or if the quantity of land held by the ryot has been proved by measurement to be less than the quantity for which rent has been previously paid by him."

The HON'BLE MR. REYNOLDS observed that, when the hon'ble member said that the provisions of sections 27 and 28 were an innovation upon the law, he forgot that Act X of 1859 was in operation in Chota Nagpore, subject to considerable modifications, and the changes introduced in the Bill were really a recognition of the alterations of the law which had practically been in force for some time past.

The HON'BLE MR. MACKENZIE remarked that his hon'ble friend seemed also to forget the elements of which rent consisted in Chota Nagpore. It there implied not only money, but all sorts of things—personal service, the presentation of milk and goats on festivals, and the like. It was because Act X of 1859 was found utterly unsuited to the circumstances of the province that the Council was now asked to provide a special procedure under which the work could be carried on; and it was much better to leave the settlement of the terms of rent to the Deputy Commissioner.

The HON'BLE THE ADVOCATE-GENERAL said that, as by the previous sections the power of enhancement was left to the discretion of the Deputy Commissioner, so the power of abatement was by these sections vested in the discretion of the same officer. But he did not think sections 27 and 28 quite consistent with the provisions relating to enhancement of rent. Section 22 provided that a petition for enhancement must proceed on the ground of a measurement of the land held by the tenant; section 23 also required that the petition should specify the general rate prevailing in the village for different classes of land, and other particulars. But section 27 was very general in its terms. It might apply to any given thing. The petition might claim an abatement because the tenant could not pay the rent. It did not at all correspond with the previous sections relating to enhancement, and therefore the ADVOCATE

GENERAL thought that there was some force in the objections taken by the hon'ble mover of the amendment, and that section 27 certainly required amendment in the direction he had indicated.

The HON'BLE MR. REYNOLDS said that the particulars required by section 23 were matters that were likely to be within the cognizance of the person applying for enhancement of rent, and it seemed reasonable that he should be asked to give the particulars referred to. But it was not to be supposed that the ignorant ryots of Chota Nagpore would be in a position to supply information of that kind.

The HON'BLE THE ADVOCATE-GENERAL observed that if the ignorant ryot was not in a position to supply those particulars, he ought not to ask for an abatement of his rent.

The further consideration of sections 27 and 28 was then postponed.

Section 30 provided as follows:—

"Any instalment of rent which is not paid on or before the day when the same is payable according to the pottah or engagement, or if there be no written specification of the time of payment, at or before the time when such instalment is payable according to established usage, shall be held to be an arrear of rent under this Act, and in the absence of any written agreement to the contrary shall be liable to interest at six per centum per annum."

The HON'BLE BABOO KRISTODAS PAL moved the omission of the section and the substitution of the following:—

"Any instalment of rent which is not paid on or before the day when the same becomes due, shall be deemed to be, for the purposes of this Act, an arrear of rent.

"Provided that, in the absence of a written agreement specifying the time of payment, the rent payable by the ryot shall be held to become due fifteen days before the date fixed for the payment of the revenue or rent payable by the superior landlord on account of the land in respect of which the ryot's rent is payable, and to be payable in the same number of instalments as the said revenue or rent; and the amount of each instalment of such rent shall bear the same proportion to the whole of such rent payable for the year as the amount of each instalment of such revenue or rent bears to the whole of such revenue or rent payable for the year. Interest at the rate of twelve per centum per annum shall be allowed upon the amount in arrear when not paid at the due date in the absence of any written agreement to the contrary."

This, he said, was a most important section. It related to the question of instalments of rent. Not unfrequently the court was puzzled to decide what was really an instalment of rent. In some cases instalments were payable monthly, in some bi-monthly, in some quarterly, and in other cases no rule whatever existed. This uncertainty as to the time for the payment of instalments of rent was a source of great dispute between the zemindar and the ryot, and of much trouble to the courts. He found that in the Oudh Rent Act of 1868 there was a section analogous to that which he now proposed, and following the principle of that section, he ventured to introduce this amendment. He would, however, omit from the first paragraph of the section the words "whether under a written agreement or according to law or local usage," which stood in the notice paper. They existed in the Oudh Rent Act; but it had been pointed out to him by the learned Secretary that the words were not consistent with the proviso proposed by him. He would himself prefer to fix the payment of rent

in four quarterly instalments; but that point was under the consideration of Government in reference to Bengal generally, and, as a tentative measure, he would follow the provisions of the Oudh Rent Act. He believed that many parts of Oudh were not more advanced than the province of Chota Nagpore; and as the system had worked satisfactorily there, he thought it might also work well in Chota Nagpore.

The HON'BLE MR. REYNOLDS said he had the strongest objection to the amendment. In the first place the hon'ble member did not tell the Council how the ryot was to ascertain what was the date fixed for the payment of revenue or rent by his superior landlord. That seemed to him to be a practical difficulty. The amendment, moreover, seemed to involve a cumbrous and complicated calculation. He remembered the case of one ryot in Chota Nagpore, whose rent consisted of a goat, three pots of ghee, twenty-five bundles of thatching-grass, and fourteen days' labour. He would ask how such a ryot was to pay an instalment of "rent in the same proportion to the whole of such rent payable for the year as the amount of each instalment of such rent bears to the whole of such revenue or rent payable for the year." He thought the hon'ble member would admit that in a case of that kind this amendment would not apply. He did not also understand that the amendment was necessary for the protection of the zemindar. It might be said that in Bengal the zemindar ought to be able to enforce payment of his rent before he himself was compelled to pay the Government revenue. But that argument hardly applied to Chota Nagpore, where the assessment on the land was very light, the population numbering some four millions, and the land revenue only four lakhs per annum, or a land revenue of one rupee to every ten souls. That was quite a different state of things from what existed in Bengal Proper, where the population was some thirty-five millions, and the land revenue nearly two and a half crores. Then it might be said that the zemindar was compelled to pay land revenue, and that he ought to have a speedy remedy against his ryot. But possibly the hon'ble mover of the amendment might not be aware that Act XI of 1859 was not in force in Chota Nagpore, and that no estates were sold for arrears of revenue in the province.

The HON'BLE THE ADVOCATE-GENERAL said he did not think the illustration which had been given entirely got rid of the objection to the section in the Bill. Still he thought that the section as it stood was wholly unobjectionable. It provided for the payment of instalments of rent at the time when it was payable according to established usage where there was no written specification of the time of payment, and that the instalment should bear interest at six per cent. In all zemindaries there was an engagement to pay at a certain time, or, in the absence of such engagement, according to established usage. He thought that the introduction of the amendment would lead to further complications, and as the section was an ordinary section he would support it.

The HON'BLE BABOO KRISTODAS PAL said that the section which stood in the Bill had been taken from the present rent law, and hon'ble members were well aware that the course of the existing law had not been quite simple or

certain. None was better aware than the hon'ble and learned Advocate-General that the question of instalment was in many cases a debateable one, and that in some cases in the 24-Pergunnahs the District Judge declined to allow interest for arrears of rent, because it was not certain whether the instalment or *kist* claimed was correct or not: in fact he would not allow any interest until the expiry of the year for which rent was demanded. BABOO KRISTODAS PAL thought that if the period of instalment could be fixed by law, it would remove a fertile source of misunderstanding on the subject. If, however, it was impracticable to introduce into Chota Nagpore the system which, as he found, had been working in Oudh, he would certainly bow to the decision of the Council. He did not, however, think that it would be difficult for the ryot to ascertain the kists in which the rent of his superior landlord was paid: he could easily go to the kutcherry of his landlord and ascertain that fact, and, if necessary, the landlord might be required to notify in his own estate the number of kists in which he paid his revenue or rent. As to what had been said as to services rendered in payment of rent, he might observe that the Bill proposed to commute them into money payments. He only alluded to payments in money. But if there were practical difficulties in the way of carrying out the amendment, he would not object to withdraw it.

The motion was then by leave withdrawn.

His Honor the President here vacated the chair, and the Hon'ble the Advocate-General presided.

Section 31 provided as follows:—

"When an arrear of rent remains due from any ryot at the end of the Bengal or Sambut year, or at the end of the month of Jeth of the Fusly or Willayuttee year, as the case may be, such ryot shall be liable to be ejected from the land in respect of which the arrear is due, but only in execution of a decree or order passed under the provisions of this Act"

The HON'BLE BABOO KRISTODAS PAL moved the omission of all the words of the section from the beginning to the words "as the case may be," and the substitution of the following:—

"When an arrear of rent remained due from any ryot, whether at the end of the year or not."

The object of the amendment was to facilitate the recovery of rent. Under this Bill there would be no distraint; occupancy tenures might be sold or not, according to the custom of the country, in satisfaction of arrears of rent; and in the third place a defaulter might be put in jail for default in the payment of rent. But as that process would be expensive to the landlord, it might be easily imagined that it would not facilitate the speedy recovery of rent. The only other remedy was ejectment or eviction under section 31. But as the section was worded, no ryot would be liable to be ejected, except when an arrear remained due at the end of the year; so that for one whole year the zemindar could be kept at bay, though at the same time he would be

The Hon'ble Baboo Kristodas Pal.

bound to meet his demand with the same punctuality as ever. Now this BABOO KRISTODAS PAL considered not fair. The Government had frequently recognized the necessity of facilitating the recovery of rent; and as a special rent law was about to be passed for the province of Chota Nagpore, it seemed meet and fair that such a procedure should be prescribed in that respect as would secure the object in view. If a ryot, for default in the payment of rent, were rendered liable to be ejected from his holding, he would take proper precaution not to allow his rent to fall into arrear. If necessary, a review of judgment might be allowed in cases of ejectment, and reasonable opportunity should be given to the ryot to show cause why he could not pay his rent on the due date. BABOO KRISTODAS PAL thought that it was but fair that when other means of realizing rent were so ineffectual, this one means of doing so expeditiously should not be rendered so lax in its working as to practically nullify its effect.

The HON'BLE BABOO ISSER CHUNDER MITTER said that this was another item of improvement in the law against which he had nothing to say in its other phases. But considering the question as it at present stood, the Council must remember that the proposed provision had not yet been brought into operation in Bengal: it was still under consideration. How far it was wanted in the districts of Chota Nagpore was another question. There were many difficulties in the way of selling tenures within the year. The crops were on the ground, and if you sold a tenure in the middle of the year, it would operate very oppressively on cultivators. Nevertheless, taking the provision in the abstract, he was not opposed to it. He was quite agreeable to making tenures saleable on failure of payment of instalments, just as estates were; but he thought that the question had not yet received the consideration which it deserved. The question would come up before the Government of India in connection with the general amendment of the rent law, and he thought it might well wait until such consideration was given to it. No difficulty, it seemed, had been experienced in Chota Nagpore in respect to the realization of rent. The tenures there were mostly heritable, or held at the pleasure of the landlord; there were very few transferable tenures in the province, and he believed that, practically, the amendment would be of very little use there. The question was a large one and required serious consideration. Moreover, he understood that this question had been regarded in a different light by the Government of India, and he believed there was a letter from that Government giving expression to its views on this subject, in which the Government of India seemed quite opposed to transfers of tenures by sale for arrears.

The HON'BLE MR. REYNOLDS said that he wished to observe, in addition to what had fallen from the hon'ble member who had just spoken, that this question of facilitating the recovery of rent was not practically called for. The landholders of Chota Nagpore did not require a special procedure to recover their rent; what was rather needed was protection for the ryot more than for the landlord, and Chota Nagpore was the last place in which, in a matter of this kind, we should attempt to go beyond the stage to which we had gone in Bengal.

The HON'BLE BABOO MOHINI MOHAN ROY said he supported the amendment for this reason, that although the law in Bengal now was that the ryot might be ejected at the end of the year, practically it took a great deal more time than that to do so: a couple of years was about the least that would be required in effecting an ejectment. And he found, on reference to section 88 of the Bill, that in all cases for the ejectment of a ryot or the cancelment of a lease, the decree should specify the amount of the arrear, and that if such amount, together with interest and costs of suit, be paid into court within fifteen days from the date of decree, execution should be stayed. Therefore, practically, the ryot could always save his tenure by paying the arrears under the decree for ejectment.

The HON'BLE MR. AMEER ALI said he was inclined to support the amendment, because he was of opinion that the provisions of section 31 would operate harshly towards the landlord, as the ryot could only be compelled to pay his rent at the end of the year; and under process of law, an ejectment suit might last for two years, and during the whole of the time the landlord would be kept out of his rent. He thought that on principle the amendment was correct.

The HON'BLE THE ADVOCATE-GENERAL said he thought it would be improving the law at the wrong end if the Council began by improving it with regard to persons who had more primitive notions than the people of Bengal. Although on principle there appeared to be no objection to the amendment, still, when you were about to alter the law, it was very necessary to consider the people in respect to whose affairs the alteration was proposed: they were less civilized and less capable of knowing what the law was, and if this sudden change in the law was passed amongst a people of this kind, it would, as he had said before, be improving the law at the wrong end. As it had been said more than once that larger measures were in contemplation for the amendment of the rent law, he thought it would be better to leave the matter as it stood and to uphold the Bengal Act in this respect. He should therefore vote against the amendment.

The HON'BLE MR. MACKENZIE would say that the introduction of a provision making ejectment from land an easy and ordinary process might even be a source of political danger. He thought that the sympathies of the Council would be entirely wasted if lavished thus upon the zemindars of Chota Nagpore. Most of these had but a small quit-rent to pay, which bore no appreciable relation to the rents which they received from their tenants, and had no difficulty whatever either in paying their revenue or getting their rent. That this question of ejectment amongst a primitive people was a serious matter in the opinion of the local officers was plain from the fact that not merely the occupancy ryot, but all ryots were protected from ejectment save under orders of the court, and he would oppose any modification not supported by the local officers.

The HON'BLE BABOO KRISTODAS PAL observed that he did not see how the amendment he proposed would at all alter the state of things to which the hon'ble member who last spoke had referred. The ejectment of a ryot could not be made without instituting a suit, and that suit must be heard by the

Deputy Commissioner. Then, if within fifteen days the amount decreed with interest and costs were paid into court, the tenure might be saved; so he did not see how, practically, the position of the Commissioner was altered. The only difference was that instead of ejectment being decreed when the arrear was for one year, he suggested that recovery by ejectment might be made, whether the amount in arrear was for one year or not: that was the only difference which the amendment would make. And the necessity for the amendment arose from the general character of the people and the provisions of the Bill with regard to the recovery of rent, which might be rendered null and void if the ryots proved refractory. It had already been remarked that occupancy tenures were rare in Chota Nagpore. If such was the case, then tenures could not be sold, and the present restrictive provision about ejectment would prove more to the detriment of the rent-receiver than otherwise. As had been already remarked, it might take two years to get a decree in an ejectment suit; and the Bill, as it was framed, would give no facilities whatever for the recovery of rent from refractory ryots. BABOO KRISTODAS PAL admitted that the relations between zemindars and ryots in Chota Nagpore were of a feudal nature; but he could not understand why the feudal power should vest in the patriarchal ruler of the district and not in the landlord. Surely this was at variance with the usual conditions of the feudal system.

The HON'BLE THE ADVOCATE-GENERAL remarked that although it had been stated that an ejectment suit might occupy two years, it might, on the other hand, take only two months to get a decree; and might it not be unfair to compel a ryot to pay rent before his operations for the year were concluded? As he had said before, he thought it would be dangerous to make such a change.

After some further discussion, the motion was by leave withdrawn.

Section 34 provided for the registry of transfers of tenures by "all dependent talookdars and other persons possessing a permanent heritable interest in land intermediate between the zemindar and the cultivator."

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words above quoted, and the substitution for them of the words—

"All dependent talookdars and other persons possessing a permanent transferable or heritable interest in land."

He was an advocate of registration of tenures. He did not see why only those who possessed heritable interests in land intermediate between the zemindar and the cultivator should be required to register their tenures. That limited the operation of the law to an extent which he thought was not desirable. He knew that that was the law under Bengal Act VIII of 1869, but, in his opinion, the law was defective. He thought that the registration of tenures should be extended as far as possible, as it would remove much uncertainty and misunderstanding as to who was the actual holder of a tenure, and it was with that view that he moved this amendment.

The HON'BLE MR. REYNOLDS said the section as it stood was intended to apply to a particular class of tenures in Chota Nagpore—a kind of feudal tenures

with succession to the heirs of the grantee, but with a reversion to the landlord on failure of such heirs. The object of the amendment was to include occupancy tenures within the provisions of the section, whereas the section as it stood would apply to all but that class of tenures. He himself had no objection to make to the principle of the amendment. Occupancy tenures were not included, in deference to the opinions of the local officers, simply because occupancy ryots had in Chota Nagpore a very shadowy sort of right. But he should prefer that the section should be left as it stood, on the ground that he was not prepared to say how far the amendment would be practically workable.

The HON'BLE BABOO KRISTODAS PAL observed that the bhuinhari and bhuia tenures were heritable, though they were not transferable, and he saw no reason why the holders of those tenures should not be required to register them.

The HON'BLE BABOO ISSER CHUNDER MITTER thought it was necessary only to provide for the registration of tenures which were transferable as well as tenures which were heritable. The only district in which there were tenures which were both heritable and transferable was the district of Singbhoom; in the other districts tenures were simply heritable, there being very few which were transferable. He thought the object in view would be met by the insertion of the words "or transferable" after the word "permanent" in line 2 of the section.

The HON'BLE MR. REYNOLDS explained that section 34 was not intended to apply to transferable tenures; section 35 was meant to provide for certain tenures of that nature. The difference between the amendment and the provisions in the Bill was that the former would include "occupancy tenures;" and he was not prepared to say that he wished to see occupancy tenures included.

The HON'BLE BABOO MOHINI MOHAN ROY would include both classes of tenures in this provision: he thought it was the interest of the ryot that transfers or changes in title should be registered. The omission to register had hitherto led to much litigation.

The HON'BLE MR. MACKENZIE said that personally he had always advocated the registration of transfers of occupancy tenures; but he thought it was not fair that the hon'ble member should propose this amendment, as he had consented to postpone all substantive amendments of the present law. The section under consideration was intended to apply to an entirely different class of tenures from those which his hon'ble friend had in view, and he was not prepared to vote for the amendment without having the opinion of the local officers on the subject. The amendment would effect a very important modification of the law, and might no doubt be a very desirable improvement in the general law of rent. If we were to have a satisfactory rent law, we must insist on the registration of occupancy rights; but, under the circumstances, he thought the amendment ought not to be introduced into this Bill.

The HON'BLE THE ADVOCATE-GENERAL said that, having regard to the latter part of section 34, his inclination would be to restrict rather than to enlarge the registration of transfers; for if you enlarged the terms of the first portion of the section you might let in a flood of quasi-litigation. His own opinion,

therefore, was rather against the enlargement of section 34, especially as it contained a provision which would enable the Deputy Commissioner, on proof to his satisfaction being given of the service of notice, to put the zemindar in possession of the talook or tenure.

After some further discussion the Council divided :—

Ayes 4.	*Noes* 4.
THE HON'BLE BABOO MOHINI MOHUN ROY.	THE HON'BLE BABOO ISSER CHUNDER MITTER.
" RAJAH PRAMATHA NATHA ROY.	" MR. MACKENZIE.
" BABOO KRISTODAS PAL.	" MR. REYNOLDS.
" MR. AMEER ALI.	" THE ADVOCATE-GENERAL.

The numbers being equal, the Advocate-General (presiding) gave a casting vote with the noes.

So the amendment was negatived.

The HON'BLE RAJAH PRAMATHA NATHA ROY withdrew the amendments to sections 37 and 71, of which he had given notice, because his first amendment, with which they were connected, was negatived.

The HON'BLE BABOO KRISTODAS PAL moved the introduction of the following section after section 138 :—

"No appeal shall lie from any decree of a Deputy Collector in a suit for arrears of rent under this Act, unless the judgment-debtor deposit the amount of the decree with costs in the court of such Deputy Collector to the credit of the person who has obtained the decree."

The object of the section was that, if the court of the Deputy Collector decreed a suit for an arrear of rent, the ryot might be required to deposit the amount, so that the zemindar might take it out of court. If, on the other hand, he preferred a suit in appeal, there would be no difficulty in obtaining the money from the zemindar. This provision had been suggested by several experienced local officers in reference to the general law for the recovery of rent. BABOO KRISTODAS PAL hoped it would not be considered that this provision introduced a material or radical alteration in the law in Chota Nagpore.

In the Small Cause Courts no application for review of judgment was allowed unless the amount of the decree and costs was deposited in court. He believed that in the Agrarian Disputes Act there was a provision requiring that no appeal should lie against a judgment for the recovery of rent, unless the amount decreed was deposited; and he thought that, if such a provision was just for other parts of the country, it was just for Chota Nagpore, particularly as this Bill did not offer sufficient facilities for the recovery of rent in that province.

The HON'BLE MR. REYNOLDS said he must protest against the position taken up by the hon'ble member that the zemindars of Chota Nagpore required facilities for the recovery of rent. He did not know whether his hon'ble friend was speaking after communication with the zemindars of that province: on the contrary, MR. REYNOLDS thought the class which required protection and facilities was the tenant class. He admitted that in principle no objection could be taken to the amendment, and a similar provision, or something of the kind, had been inserted in the draft of the measure which it was proposed to introduce into

Council. But it was one thing to do that in regard to Bengal proper and another to introduce this amendment into a law for Chota Nagpore. The Agrarian Disputes Act had never been put in force in that province, and the proposed provision seemed to him to be calculated to do a great deal of mischief in such a province as Chota Nagpore.

The HON'BLE BABOO ISSER CHUNDER MITTER observed that he was quite in favor of this amendment on principle; but, considering that it involved a question of the general improvement of the law, he would put it to his hon'ble friend whether the amendment could not well wait with other important matters connected with the amendment of the general rent law, which were now under consideration elsewhere.

The HON'BLE THE ADVOCATE-GENERAL said this seemed to him to be a very radical change in the law. Appeals were now allowed in all sorts of cases without the deposit of the debt and costs. In the Small Cause Court, where no appeal was admissible, and there was just a chance of the reversal of a decree, it might be right to require the deposit of the amount decreed. But he thought it would be unjust to introduce such a principle in a matter so simple as this. Appeals were allowed in consequence of the want of experience on the part of Deputy Commissioners, and the injustice which might at times be done if their decisions were made final. That being so, he thought there should not be a hard condition attached to an appeal that the ryot must deposit the debt and costs before he could appeal. We ought rather to await the changes which were likely to take place in the rent law, and it would in his opinion be premature to introduce such a change here.

The motion was then negatived.

The HON'BLE RAJAH PRAMATHA NATHA ROY moved the omission of clauses (1) and (2) of section 147, and the insertion of the following clause :—

"by beat of tom-tom in the village in which the holding to which the notice or summons relates is situated."

He said that, from what he understood of the people in Chota Nagpore, the clauses of this section, which related to personal service of notices and summonses, and to service through a general agent, could not apply, and that what he proposed in addition to clause (8) would be more suitable. The people were said to be a jungly people, and it would therefore be very difficult to effect personal service of a notice or summons on them. Moreover, he did not think any tenant, especially tenants in Chota Nagpore, had a general agent to attend at the courts and receive service of summonses and notices, and it would also be difficult to serve these processes upon them by registered letters, as they were said to be unable to read or write. A zemindar would therefore find it difficult to prove service of summons in such cases. It was for these reasons that this amendment was proposed, and a similar proposal was accepted by this Council in the Settlement Officers' Powers Bill.

The HON'BLE MR. REYNOLDS said that the hon'ble member proposed to leave out the ordinary method of serving notices and summonses, and merely to provide that they might be served by beat of tom-tom. His hon'ble friend's

arguments were founded on the assumption that all the notices and summonses that would be served under this Bill were notices and summonses served on ryots by zemindars, whereas it would often be the other way; and MR. REYNOLDS would therefore prefer to leave the section as it was. The service of notices and summonses by beat of tom-tom might be very appropriate where a general notice or summons had to be issued; but such a mode of service was not appropriate where the service was to be made on individuals.

After some conversation the amendment was by leave withdrawn.

The Council was adjourned to Saturday, the 2nd of March.

Saturday, the 2nd March 1878.

Present:

The Hon'ble G. C. PAUL, *Acting Advocate-General, presiding*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble MR. AMEER ALI,
and
The Hon'ble BABOO MOHINI MOHAN ROY.

NEW MEMBER.

The Hon'ble MR. O'KINEALY took his seat in Council.

SUITS BETWEEN LANDLORDS AND TENANTS IN CHOTA NAGPORE.

The HON'BLE MR. REYNOLDS moved that the Bill to amend the procedure in suits between landlords and tenants in Chota Nagpore be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. REYNOLDS said that the amendment upon section 16, of which he had given notice, was of an entirely verbal character. The section itself was a re-production of section 11 of Act X of 1859, previous to the passing of which law the power of compelling the attendance of ryots by their zemindars had been in force. The phraseology of the existing provision was antiquated, and he therefore proposed to substitute for it a section, the effect of which would practically be the same :—

"All zemindars and other landholders are prohibited from compelling the attendance of their tenants for the adjustment of their rents or for any other purpose, and from adopting any means of compulsion for enforcing payment of the rent due to them other than those authorised by this Act."

The motion was agreed to.

The HON'BLE MR. REYNOLDS said that, according to section 22 of the Bill as it now stood, in every application for enhancement of rent there must be a petition for the measurement of the land. It was not intended to confine enhancement applications to cases in which the area of the holding was in dispute, nor to require that the applicants should necessarily ask for the measurement of the land in every case, but only when it was necessary. MR. REYNOLDS therefore moved certain amendments in the section which made it run thus—

"Any person wishing to enhance the rent previously paid to him by any such under-tenant or ryot, may present a petition to the Deputy Commissioner to assess the rent on the land in respect of which such enhancement is sought, and (if necessary) to measure the same."

The motion was agreed to.

On the motion of the HON'BLE MR. REYNOLDS section 24 was similarly amended.

The consideration of section 27, relating to claims to abatement of rent, was postponed at the last meeting, in order that it might be amended so as to make it correspond with the sections relating to enhancement.

The HON'BLE MR. REYNOLDS moved that the following section be substituted for section 27:—

"Any under-tenant or ryot having a right of occupancy, and wishing to claim an abatement of the rent previously paid by him, may present a petition to the Deputy Commissioner to assess the rent upon the land in respect of which such abatement is sought, and, if necessary, to measure the same.

"Such petition shall specify the particulars mentioned in section 23, and the grounds on which such under-tenant or ryot considers that he is entitled to such abatement. The provisions of sections 49 and 50 shall apply to all such applications"

The motion was agreed to.

A corresponding amendment was, on the motion of the HON'BLE MR. REYNOLDS, made in section 28.

Section 56 provided that if the cost of serving a summons or warrant be not deposited in court, the case should not be brought on the file of suits; but in such case the plaintiff might present another plaint at any time within the period "allowed by the law for the time being in force for the limitation of suits." The wording of the section, MR. REYNOLDS said, did not make it quite clear whether the law in force as to limitation referred to the general law of limitation, or to the specific limitations laid down by this Bill. The intention was to refer to the limitations laid down previously in section 42 and the following sections of this Bill, and, to make this quite clear, he moved that for the words within quotations the words "prescribed by this Act for the limitation of suits" be substituted.

The motion was agreed to.

A similar amendment was, on the motion of the HON'BLE MR. REYNOLDS, made in section 62.

The HON'BLE MR. REYNOLDS then moved that the Bill be passed. The only alteration made in the Bill, which was of more than a verbal character, was the alteration in section 27. But the principle of that amendment was discussed

and accepted by the Council at its last meeting, and he thought there was nothing in the other amendments which were passed at the present sitting which need lead to further delay in the passing of the Bill.

The motion was agreed to and the Bill passed.

On the motion of the HON'BLE MR. REYNOLDS the Hon'ble Mr. Ameer Ali was added to the Select Committee on the Bill to consolidate the law relating to the excise revenue in the Presidency of Fort William in Bengal.

The Council was adjourned to Saturday, the 16th instant.

Saturday, the 16th March 1878.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR,
The Hon'ble F. JENNINGS,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR,
The Hon'ble BABOO MOHINI MOHUN ROY,
and
The Hon'ble MR. AMEER ALI.

COURT OF WARDS.

The HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to amend the law relating to the Court of Wards within the provinces subject to the Lieutenant-Governor of Bengal. He said, the Council would remember that the subject had been under consideration during the last year, and a Bill was brought in, and was eventually passed in April 1877, and sent up to the Governor-General for sanction. Unfortunately one of the sections of that Bill prohibited the execution of civil court decrees against property under the charge of the Court of Wards, and this was considered to be at variance with a provision in the new Code of Civil Procedure, and the Governor-General was therefore unable to give his assent to the Bill, and at the same time the Government of India suggested some minor alterations and amendments in it. The Bill, in accordance with those suggestions, was now in the course of being re-drafted, and if permission were given to him to introduce the Bill, it would be circulated to hon'ble members in the course of the week.

The motion was agreed to.

RURAL POLICE IN HAZARIBAGH AND LOHARDUDGA.

The Hon'ble Mr. O'Kinealy moved for leave to introduce a Bill for the regulation of the rural police in Hazaribagh and Lohardugga. As His Honor the President and hon'ble members were no doubt aware, for a long time the police organization in Chota Nagpore had been somewhat different from that in the other districts of Bengal. There the zemindars were allowed and indeed were bound to guard the passes, to protect travellers and traffic, and to maintain law and order within the limits of their own zemindaries. At the time of the decennial settlement, this circumstance was taken into consideration and great reductions were made in the amount of the Government revenue assessed. For instance, he would take the case of the Ramgurh estate. The Government demand upon that estate before the decennial settlement amounted to over forty thousand rupees. But at the time of the decennial settlement it was reduced to nearly one-half, in consideration of the zemindars maintaining a large force of police for the assistance of the local officers, and the maintenance of law and order within the limits of their estates. The zemindars as it were in turn sublet these liabilities. They appointed sirdars to superintend the police patrols, and compelled them to collect and support a number of men sufficient to perform the duties. These officers were not paid any fixed salaries, but were granted a remuneration for their services,—jagheers of one or two villages in the immediate vicinity of the passes which were under their control. This system was maintained till 1862, when the regular police were introduced into the province, and then the police stations were taken over by the Government, and the zemindary police were relieved of their duties. He had pointed out already that at the time of the decennial settlement, when the duties of the zemindars were defined, their assessments were reduced. Strange to say that in 1862, when a converse course took place, and the zemindars were relieved from all responsibility as regards the thana police, they were not bound, not compelled to continue their previous payments. Moreover the patrol system had not been found to work well. The police were subject to no discipline or control. As a fact, they never attended the passes they were supposed to guard, unless the Magistrate or other high authority was known to travel in that direction. It might be safely asserted that one of the most serious blots in the administration of that division was that the services of village patrols, which the zemindar and holders of under-tenures were bound to maintain, and to a certain extent did keep up, were not utilized in a proper way. Some short time since an experiment was tried in the district of Hazaribagh. The patrol police were transferred from the irresponsible direction of the zemindars and their under-tenants, and placed under the immediate control of the District Superintendent of Police, and the services of the under-tenants and zemindars were commuted into fixed money payments, sufficient to meet the charges incurred on account of police. This system had been found to work admirably. Robberies and dacoities had ceased under the organization of the new police, and it was simply to legalise and extend that organization that the present Bill was introduced.

Intimately connected with the question of the patrol police was the position and duties of the village police. At present the practice in Chota Nagpore seemed to be that the zemindar prepared a list of the sums which each ryot was bound to pay for the support of the chowkidar, and left the chowkidar to gather the money as best he could." He proposed by this Bill to get rid of this unsatisfactory procedure, and to introduce the system of collecting chowkidari dues according to the lines of the Village Police Act of 1870. It had been a matter that had undergone considerable consideration and discussion whether the Village Chowkidari Act should not be introduced into the districts to which the Bill would apply. But the local officers who were intimately acquainted with the habits and customs of that part of the country were opposed to its introduction; they feared that the provisions regarding the appointment of punchaits and others of minor importance were not suited to the people, and would not work well. With these few exceptions, the present Bill followed the lines of the Village Chowkidari Act of 1870.

The motion was agreed to.

The HON'BLE MR. O'KINEALY applied to the President to suspend the rules for the conduct of business to enable him to move that the Bill be read in Council, and referred to a Select Committee for consideration and report. The Council was now approaching the close of the session, and any delay might prevent the passing of the Bill before the sittings of the Council terminated.

HIS HONOR THE PRESIDENT observed that as the Bill before the Council was of a local and technical character, and the reasons for the introduction of the Bill had been fully explained by the hon'ble mover, it appeared to him very desirable, unless any hon'ble member had any objection to offer, that it should be put into the hands of a Select Committee without delay, so that it might be considered in detail as soon as possible. He had no hesitation therefore in suspending the rules.

The HON'BLE MR. O'KINEALY then moved that the Bill be read in Council and referred to a Select Committee consisting of the Hon'ble Mr. Mackenzie, the Hon'ble Baboo Kristodas Pal, the Hon'ble Baboo Mohini Mohun Roy, and the mover, with instructions to report in three weeks.

The motion was agreed to.

The Council was adjourned to Saturday, the 23rd instant.

Saturday, the 23rd March 1878.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR,
The Hon'ble BABOO MOHINI MOHUN ROY,
and
The Hon'ble Mr. AMEER ALI.

COURT OF WARDS.

The HON'BLE MR. REYNOLDS moved that the Bill to amend the law relating to the Court of Wards within the provinces subject to the Lieutenant-Governor of Bengal be read in Council. He said that in making this motion it would be unnecessary for him to detain the Council with any remarks on the provisions of the Bill, because the Bill in its present shape was substantially a reproduction of the measure which was passed by this Council last session. The only differences of importance between this Bill and the former one were the omission of the section which was formerly section 9, which prohibited the execution of decrees of court against the property of wards, and the introduction of sections 69, 70, and 71, defining the duties and responsibilities of the guardians of wards. He thought, however, that it would be desirable that the Bill should be considered by a Select Committee, as there were some provisions in the Bill which might be improved on further consideration.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. O'Kinealy, the Hon'ble Rajah Pramatha Natha Roy, the Hon'ble Baboo Mohini Mohun Roy, and the mover, with instructions to report in three weeks.

MUNICIPAL LATRINES.

The HON'BLE MR. MACKENZIE, in moving for leave to introduce a Bill to provide for the cleansing and erection of latrines in first-class municipalities, said that no sanitary question had excited more interest of late years, both at home and in India, than that of the innocuous disposal of the refuse of great towns; and nowhere had this subject received more attention than in Calcutta and in the deliberations and proceedings of the Bengal Government. He

might appeal to the large sums that had been spent in this town upon sanitation and drainage, to the discussions that had repeatedly taken place in this Council Chamber and in the neighbouring Hall, and to the many able articles appearing from time to time in popular and scientific journals regarding the hygiene of the metropolis, as proving that public opinion, here at any rate, was fully alive to the importance of following sound principles and sound practice in connection with this most vital matter. To stimulate and assist this public opinion, the advice of the Government and the aid of this Council had never been wanting.

They were all of them familiar with the vivid pictures of the loathsome condition of many parts of this town, furnished quarterly by the graphic pen of the Health Officer, and they knew that, in spite of all that had been done, there was still a vast deal more to do even within the limits of Calcutta itself. But all the money, care, and trouble already spent in Calcutta, all the protracted oratory of their municipal meetings, and all the resolutions of the local Government, would be entirely thrown away if the systems of improved conservancy, sanctioned by experience, or recommended by sanitary science, were not extended to the suburbs which hemmed them in upon every side.

The municipalities of Howrah and of Alipore had for some years past felt and recognised their obligations in this respect. In the Suburban Municipality, which had had the services of an energetic Vice-Chairman and the advice of a strong and admirably selected board of European and Native Commissioners, really considerable advances had been made towards the introduction of the rational system of disposing of night-soil. In 1872-73 Mr. Sterndale, the Vice-Chairman, drew attention to the appalling fact that probably not more than one-half of the night-soil of the suburbs was then passing through the depôts for legitimate disposal, the rest being thrown broadcast on waste lands and gardens, or left to seethe and fester in the old-fashioned privies of native houses. In 1873-74 the Commissioners, moved by Mr. Sterndale's representations, introduced a modification of the Halalcore system of Bombay, under which those house-holders who wished it might have their privies regularly cleansed by municipal sweepers, they paying to the municipality fees for this service. The idea of the Commissioners apparently was to provide an efficient conservancy staff which it was optional with the house-holders to employ, and then to prosecute steadily under the law those who, declining to take advantage of the public sweepers, failed to make proper arrangements for themselves.

The popularity of this system had been in one respect unquestionable. Out of 40,000 houses in the suburbs, the owners or occupiers of 15,000 had applied for the services of the municipal staff. Representing as these did the better class of the inhabitants, it might, he thought, be legitimately inferred that the people of the suburbs were fully convinced of the necessity of a duly organised system of public scavengering. But, while ready enough to demand the services of the municipal staff, when it came to paying the municipal bills there was at present a singular backwardness on the part of some of those who benefit. Mr. Sterndale writes—

"Little difficulty was experienced on the whole in inducing the people to accept the "services of the municipal establishment; but when, on the other hand, it came to paying for it, "the case was reversed; it was found in the first place that if we waited for *applications, accom-"panied by payment in advance,* as contemplated by the rules; the whole thing fell to the "ground, no one would apply, and in fact it was found necessary to make a regular house to "house assessment.

"The bills then had to be collected by the expensive machinery of an establishment "paid either by salary or commission, and on payment being refused, there was no direct "means of enforcing it. Under such circumstances the executive had to resort to the round-"about course of stopping the services of the nightmen, and then prosecuting the house-holder "for keeping night-soil in his privy—a most cumbersome and unsatisfactory procedure.

"The fact that there were 569 prosecutions necessary during the year shows how unsatis-"factory this has been."

He states the principal objections to the voluntary system in the following way:—

"1*st.*—No proper assessment being possible, no reliable estimate of probable receipts can be framed; the department has therefore to work to a great extent in the dark. A proof of this is the fact that last year we did not reach the estimated receipts by over Rs. 13,000. [The Council would see that the Commissioners must employ and pay for a staff adequate to do the work of all those who consented to employ them. If afterwards the house-holders did not pay, the Commissioners were so much out of pocket.]

2*nd.*—No efficient check or supervision can be had over the assessing or collecting agency, nor can the Commissioners be secured against loss, or the rate-payers against extortion.

3*rd.*—The labour of the department is much increased, viz. by the fact of its having to deal with houses scattered over a vast area, instead of taking up all the houses in blocks as they occur, thereby entailing loss of power.

4*th.*—A larger staff of mehters is employed than would be necessary in proportion to the number of houses, were contiguous houses served by the department.

5*th.*—The rates fall heavier now on the poor than would be the case were a system of rate by valuation possible."

In view of these facts and arguments, and after appointing a special Committee to go into the question carefully and in detail, the Municipal Commissioners of the Suburbs, in meeting assembled, resolved that the Government should be asked to pass an Act making the payment of fees for the removal of night-soil compulsory; that this removal should be effected throughout the suburbs by an organised establishment under municipal control; and that the fees would best be levied by means of rates realisable in the same manner as the municipal house-rate, a capitation fee being substituted in the case of public institutions, barracks, schools, and factories.

At the same time, to meet the case of those persons who were too poor to pay the rate, and to ensure the closing of the thousands of filth-pits which now pollute the air and poison the soil, the Commissioners made proposals for the provision of a complete system of public latrines, to be open to the public free of charge as soon as the night-soil rate came into operation. They held that owners of *bustees* might fairly be called upon to supply sites for such latrines,

The Hon'ble Mr. Mackenzie.

just as owners of house-property in England were compelled to provide sufficient accommodation of a similar kind. The Commissioners also took into consideration the question of the disposal of the night-soil. At present they paid to the Calcutta Municipality Rs 19,200 per annum for the privilege of shooting this into the Calcutta sewers. The insufficiency of flushing power provided by the Calcutta Corporation had made suburban night-soil a serious nuisance to those quarters of the town to which it was brought for disposal in the sewers. The Commissioners proposed now to discontinue their payments to the town, and, in accordance with the best sanitary advice, to introduce the trench system of conservancy, in the hope of eventually re-paying themselves with interest from a municipal farm.

While the Suburban Commissioners were incubating the proposals of which he had given a resumé, the Howrah Municipality was also being deeply stirred by precisely similar discussions. Here, however, there had been no attempt to introduce the Halalcore system even with optional payments. The house-holders were constantly coming to the Commissioners and complaining of the annoyance and expense caused them by the night mehters. But these men were not in any way under the Commissioners' control, and the Commissioners could under the law do nothing to remedy the evils complained of. It was stated that these sweepers, having a monopoly of the work, not only charged extortionate fees, but frequently neglected their work entirely, to the inconvenience of their employers and the detriment of the public health. It was an almost every-day occurrence for house-holders to be prosecuted and fined for permitting night-soil to remain on their premises for more than 24 hours, simply because they could not get the men to come and remove it. It was even a common complaint among the people that the sweepers deposited night-soil clandestinely in the privies, and then laid informations, or threatened to do so, in order to extort money. The Commissioners of Howrah, therefore, on their part, also came up to Government asking for a law similar to that suggested by the Commissioners of the suburbs.

The present Bill was designed to meet the demands of these municipalities. It was simply an enabling measure which no municipality need adopt unless it chose, but which any first-class municipality might introduce if its provisions suited them. The maximum rate leviable on small holdings had been limited to Rs. 3 per annum, and the highest fee chargeable on any one holding would be Rs. 480 per annum, save in those cases where a larger sum was already being paid to the Commissioners by special agreement. This proviso was to meet the case of the railway premises in Howrah, for cleansing which the Commissioners already received an allowance of Rs. 3,000 per annum. The size of these premises was so exceptional as to warrant an exceptional rate of charge.

The Suburban Commissioners were very urgent that this Bill should become law without a day's unnecessary delay. They had counted on it in the preparation of their budget statements, and had incurred considerable expense in anticipation of its passing. He would, therefore, if the Council granted leave to bring in this Bill, have to ask His Honor to suspend the rules,

in order that the necessary preliminary steps might be taken, and the Bill be referred to a Select Committee for consideration of its details.

Leave being granted for the introduction of the Bill, His Honor the President declared the rules for the conduct of business suspended.

The Hon'ble Mr. Mackenzie next moved that the Bill be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Baboo Kristodas Pal, the Hon'ble Baboo Isser Chunder Mitter, and the mover, with instructions to report in three weeks.

SETTLEMENT OF THE RENT OF LANDS IN PRIVATE ESTATES.

The Hon'ble Baboo Kristodas Pal moved for leave to introduce a Bill to provide for the settlement of the rent of lands on the application of landholders or ryots. He said that in January last, when his hon'ble friend opposite (Mr. Reynolds) introduced the Bill to define and limit the powers of settlement officers in respect to the enhancement of rent, Baboo Kristodas Pal ventured to make the following remarks :—

"The object of the Bill was to reduce litigation, and he thought that the provisions of the Bill might fitly be extended to Wards Estates and Attached Estates in the hands of Government, inasmuch as these estates were practically administered by the Collector during the minority of the ward or during attachment. He would also suggest that where the zemindar should be willing to avail himself of the agency of the Revenue authorities in making settlement, he should be allowed the benefit of such agency, provided he paid the cost. In all these cases the right of the ryot to contest the decision of the settlement officer in the civil court should of course be allowed."

His hon'ble friend afterwards wrote to him to say that the Government was willing to accept his suggestion, but that a separate Bill should be introduced to give effect to it; this was the origin of the Bill which he proposed to introduce.

His object was to proceed on the lines of the Settlement of Government Estates' Bill, which had been passed by this hon'ble Council, and which now awaited the assent of His Excellency the Viceroy. The proposed Bill would be simply permissive. It would rest with the zemindars and ryots to avail themselves of the machinery to be provided by this Bill, should they like to do so. In one respect the Bill would take a broader ground than its predecessor; for, under the latter, the Government as the landlord would be alone competent to move the machinery; whereas under the former, both zemindar and ryot would be at liberty to apply for the enforcement of the law. Then in the case of the Government the settlement officer would be the servant of Government; whereas in the case contemplated by this Bill, the settlement officer would be a third party, wholly unconnected with the landlord or tenant. The principles on which the settlement was to be made must be governed by the provisions of Bengal Act VIII of 1869. These provisions were in his humble opinion vague, uncertain, and in some respects unworkable; but he did not propose to interfere with those provisions, as the Government had not yet made up its mind respecting the principles on which enhancement should be made. Keeping, then, within the four corners of Act VIII of 1869 as to the principles on which

enhancement and abatement of rent should be made, this Bill would provide for a sort of amicable settlement of rent disputes with the intervention of the revenue officer. If a zemindar or ryot should feel dissatisfied with his decision, either party would be at liberty to institute a regular suit in a civil court for the reversal of that decision. But his own impression was, and he might state that it was shared by those, both officials and non-officials, who were competent to form an opinion on the subject, that the intervention of the Deputy Collector in an amicable spirit might in many cases throw oil over troubled waters, and thus prevent harassing litigation in the civil court, which was ruinous to both the landlord and tenant.

He did not wish to occupy the time of the Council on the present occasion by describing the details of the Bill, which would be very few, but he would notice them at the next stage of the Bill. At present he simply moved for leave to bring in the Bill.

The Hon'ble Mr. Reynolds said that as this measure was not yet before the Council, he did not intend to make any remarks upon it at present. But he wished to say that the Bill appeared to him to be likely to supply a real want and to inaugurate an important reform, and he felt sure that any officer of the Government whom the hon'ble mover might wish to consult would readily give his advice or assistance in settling the details of the measure. It appeared to him also that it was a fortunate thing that the conduct of this measure should have been entrusted to an hon'ble member of the Council who enjoyed the confidence of the zemindars, and was at the same time well known for his strenuous advocacy of the rights of the ryots.

His Honor the President observed that in putting the motion to the Council he would take the opportunity of saying that the principle of the Bill was one which had his entire concurrence. He thought it did hold out some hope of affording means for the summary adjustment of differences which so long existed between zemindars and ryots regarding the enhancement and remission of rent, and so far as it was in his power, he would have much pleasure in supporting the Bill which had been introduced by the hon'ble member. He had not seen the details of the Bill, but the principle which had been enunciated seemed fair to both parties, and was deserving of every support.

The motion was then agreed to.

The Council was adjourned to Saturday, the 30th instant.

Saturday, 30*th March* 1878.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR,
The Hon'ble BABOO MOHINI MOHUN ROY,
AND
The Hon'ble MR. AMEER ALI.

REGISTRATION OF HACKNEY CARRIAGES.

The HON'BLE MR. REYNOLDS moved for leave to introduce a Bill to amend Bengal Act V of 1866. He said that by section 2 of Act V of 1866 it was provided that every hackney carriage within the Town and Suburbs of Calcutta shall be annually registered by a registering officer who shall be appointed for the purpose by the Government, and shall be subordinate to the Commissioner of Police. Under that section a separate Registrar had been appointed, and he had been provided with an office establishment; but the work of registration occupied fully only two or three months of his time in the year. The fees received under the Act amounted to about Rs. 26,000 annually, and something like 47 or 48 per cent. of that amount went in paying the expenses of establishment. It was considered that it would be an improvement if the work of registration were undertaken by the Municipal Commissioners of Calcutta, whose licensing officer would be a fit person for the performance of the work under the Commissioners, as the greater part of the surplus proceeds of fees received under the Act was made over to them. But to enable the Commissioners to appoint the registering officer under the Act, it was necessary to make some modification of section 2. The present Bill therefore provided that the Government might empower the Corporation of the Town of Calcutta to appoint the registering officer, and any officer so appointed should be under the orders and control of the Chairman of the Corporation.

MR. REYNOLDS now only proposed to ask for leave to introduce the Bill, but if leave were given, he did not propose to refer the Bill to a Select Committee, the Bill being a very short and simple one, but to ask the Council to pass the Bill at the next meeting.

The HON'BLE BABOO KRISTODAS PAL said there was one suggestion he wished to make in connection with this Bill. The Bill gave power to the

Municipal Corporation to appoint the registering officer, but not to remove him. As the Bill was now worded, after the appointment of the officer, he would be absolutely under the control of the Chairman. Under the Municipal Act an officer who received a salary of more than Rs. 200 per mensem could not be removed without the sanction of the Commissioners at a meeting. He thought it would be but proper that a similar power should be given to the Commissioners in respect to the removal of the registering officer. Perhaps the object might be attained if it were provided that this Act should be read as part of Act IV of 1876; in that case the conditions which applied to the removal of other officers of the Municipality would apply to the registering officer to be appointed under this Bill.

He would also ask the Council to consider whether a specific provision should not be made authorizing the transfer to the Municipal Commissioners of the surplus proceeds of fees levied under the Hackney Carriage Act. At present the disposal of such fees was left to the discretion of the Government. But now that the work of registration was to be transferred to the Corporation, it was meet that the surplus proceeds of fees should be made over to the Corporation for general municipal purposes, and also for purposes connected with the working of the Act, such as the construction and repairs of hackney carriage stands and the like.

The Hon'ble Mr. Reynolds said he thought it was not necessary to make any distinct provision in the Bill regarding the removal of the registering officer who might be appointed by the Municipal Commissioners under this Bill. He understood that every officer appointed by the Corporation under this Bill would be subject to the general rules which regulated the appointment and removal of other officers of the Municipality, and consequently the registering officer when appointed would not be subject to removal without the sanction of the Commissioners. But it would not be incumbent upon the Commissioners to appoint a separate officer under this Bill; as he said before, the duties of Registrar of hackney carriages might be incorporated, if the Commissioners thought fit, with those of the licensing officer of the Commissioners.

With regard to the second suggestion which had been made by the hon'ble member, Mr. Reynolds could not accept the proposal that the law should declare what proportion, if any, of the fees levied under the Hackney Carriage Act should be made over to the Municipality. Under the Act as it stood at present the surplus proceeds of the fees were at the disposal of the Government, and hitherto a certain proportion had been made over to the Municipality. It did not seem to him to be necessary to bind the Government to make over the surplus to the Commissioners.

The motion was agreed to.

REGISTRATION OF ESTATES.

The Hon'ble Mr. Reynolds moved for leave to bring in a Bill to amend Bengal Act VII of 1876. The Government, he said, had been reluctant to ask the Council to amend a law which had so recently come into operation. But they

were advised that the law as at present worded was in one point defective and might open the door to litigation, which it was desirable to avoid. He need not remind the Council that the whole principle of the Act of 1876 was that registration should be based upon the fact of possession. That was the principle of the former law, Regulation VIII of 1800, and it was also the principle of the Act of 1876. Accordingly, section 52 of that Act provided that if an applicant for registration applied to the Collector, and if the Collector found the fact of possession proved, he should register the applicant's name, but not otherwise. But the framers of the Act considered it a very important object that every acre of land in a district should be accounted for and registered as in the possession of some proprietor; and for this purpose provision was made for cases in which the proof of possession in respect of any property might not be absolutely satisfactory. And this was done by section 55 of the Act, which provided that if an application for registration was made, and the Collector was not satisfied that the applicant was in possession of the land in respect of which registration was asked for, he should make a summary enquiry as to the right to possession, and deliver over possession accordingly and make the necessary entry in the register. MR. REYNOLDS had no doubt that it was intended that the procedure under section 55 should be supplementary to that provided by section 52, and should never be had recourse to in cases in which the possession of any person was distinctly proved. But owing to some want of clearness in the wording, claims had been made under that section by persons who were decidedly not in possession of the land in respect of the registration of which application was made, whereas other persons were in adverse possession of the land; but relying upon the wording of section 55, such persons had required the Collector to adjudicate summarily the right to possession. It was certainly not intended that claims of that kind should be made under the section, but the wording of the section did not absolutely prohibit it. It was therefore necessary to amend the law by introducing a few words to show that the question of determining the right to possession could only be raised in cases in which it was not proved that any person was in possession.

With regard to this Bill, MR. REYNOLDS proposed to take the same course as with respect to the Bill to amend Bengal Act V of 1866. He now only asked for leave to introduce the Bill, and did not propose to refer it to a Select Committee, but would ask the Council to pass the Bill at its next meeting.

The HON'BLE THE ADVOCATE-GENERAL said that he entirely supported the measure which had been introduced by his hon'ble friend Mr. Reynolds. The words of the section which it was intended to amend were certainly open to objection, and not unlikely to be read in a manner not contemplated by the legislature. It was quite clear that the general intention of the Act was to grant registration only where actual possession was proved. But by the section under notice, it was intended to provide summary investigation of title in cases where the person in possession had died intestate, and persons claiming adversely as heirs had respectively ostensible possession of certain portions of the property in respect of which registration was required by

The Hon'ble Mr. Reynolds.

receipt of the rents thereof. It was to meet cases of that sort that section 55 of the Registration Act was framed. If section 52 and the section in question were read together carefully, there would not be much doubt as to what was the intention of the legislature; but as the section as it now stands was calculated to create some doubt, it was prudent to amend it at once, in order that the intention should be rendered clear, and that the officers of Government and the public at large should not be led into controversies which the Act was never intended to raise. Under the circumstances, the ADVOCATE-GENERAL thought the course proposed in bringing in this Bill to correct an error which was patent on the face of the law was a proper one.

The motion was agreed to.

SETTLEMENT OF THE RENT OF LANDS IN PRIVATE ESTATES.

The HON'BLE BABOO KRISTODAS PAL moved that the Bill to provide for the settlement of the rent of lands on the application of landholders or ryots be read in Council. At the last meeting of the Council, he explained the object of the Bill which he then obtained leave to introduce. The details of the Bill were very few. As the present Bill proceeded upon the lines of the Bill which had already been passed by the Council defining the powers of settlement officers in regard to the enhancement of rent in Government Estates, he had endeavoured to accomplish his object by making the few provisions of this Bill fit into the provisions of that Act. In the first place, he proposed that a mouzah should be the minimum limit of area for operations under this Bill, and that the mouzah should correspond with the same recorded in the Survey Register. Then it was provided that on the application of a landholder or a body of landholders, or of sharers registered under section 10 or 11 of Act XI of 1859, or (where the property was joint or undivided) on the application of landholders whose interests represented three-fourths of the property, the Collector should appoint a Deputy Collector for the settlement of the rent of the land. When he referred to a body of landholders, he meant petty landholders who might have definite shares in a mouzah, but might not hold a mouzah wholly. In these cases, he thought they ought to be allowed to combine and move the machinery of the law if they liked. In the same way ryots would be competent to move the Collector to appoint a Deputy Collector for the settlement of rents, if three-fourths of their body combined to make an application to the Collector. Then it was enjoined that, if all the shareholders in a mouzah did not join in the application, those who might refuse to join would not be entitled to enjoy the benefit of the law; if they wished to enhance the rent, they must go through the usual course of a civil suit, and be prepared to bear the cost of harassing litigation. Then section 5 authorized the Deputy Collector to exercise the necessary powers for settlement and also for measuring land, as far as practicable, in accordance with the provisions of Bengal Act VIII of 1869. Section 6 provided that, where there might be a dispute as to the person liable to pay rent, the Deputy Collector should hold an enquiry and declare the person actually paying rent to be the person liable, or he might declare summarily who was the person

liable to pay rent, subject to a suit in the civil court; so that, if an injustice were committed by the summary award, there would be room for redress. There would be thus two things for the Deputy Collector to determine—firstly, who was to pay the rent; and secondly, what amount.

Then the rent fixed by the Deputy Collector, unless reversed by the decision of a civil court, should have currency for ten years, so that the land might have rest for that period.

As the proceedings under this Bill would be initiated on the application of landholders or ryots, the cost should of course be borne by the applicants; that was to say, the whole of the cost of measurement, and so much of the salary of the Deputy Collector as would cover the time *bonâ-fide* spent in the conduct of the settlement. It would be necessary for the Board of Revenue to frame rules to calculate the cost of the proceedings, and in that view the Board would doubtless require the Deputy Collector to keep a diary, so as to ascertain what time he had devoted to this particular work, for it would not be fair if only one hour in the day was devoted to the work, to debit to it the whole salary of the Deputy Collector for that day. The Board, he proposed, should lay down rules on this subject which would be fair and equitable. At the same time, he thought the Government might see fit to remit the costs in special cases in which the public interests might require a re-settlement of an estate.

The provisions for the enhancement or abatement of rent were contained in sections 9 and 10 of the Bill. It was not proposed to vary the existing principles in any way. He wished he could suggest the modification of some of those principles which were vague, indefinite, and unworkable; but, as he had observed at the last meeting of the Council, the Government had not made up its mind on that subject, and he would not therefore tread upon that forbidden ground. He should, however, observe that this Bill did not pretend to solve the problem of the enhancement of rent: so long as the principles upon which rent was to be enhanced were not definitely and satisfactorily settled, that problem could not be said to be solved. But if the Council thought fit, that much vexed question might be taken into consideration.

The remaining sections followed those of the Bill already passed by the Council with regard to the settlement of Government Estates, and he need not therefore enter into them. He did not propose that the Bill should be passed in a hurry. It would be published and forwarded to the Revenue Officers of the Government for opinion, and next winter the Bill would be revised in the light of the opinions which it was hoped would be received from both official gentlemen and the public in general. He concluded by remarking that he was indebted to his hon'ble friends Messrs. Reynolds and Mackenzie for the material help they had given him in settling the details of the Bill.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. Mackenzie, the Hon'ble Mr. O'Kinealy, the Hon'ble Baboo Issur Chunder Mitter, the Hon'ble Rajah Pramatha Natha Roy, the Hon'ble Baboo Mohini Mohun Roy, and the mover.

The Council was adjourned to Saturday the 6th April.

Saturday, the 6th April 1878.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Acting Advocate-General*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. J. REYNOLDS,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble BABOO ISSER CHUNDER MITTER, RAI BAHADOOR,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR.
The Hon'ble BABOO MOHINI MOHUN ROY,
and
The Hon'ble AMEER ALI,

NEW MEMBER.

The Hon'ble MR. BUCKLAND took his seat in Council.

REGISTRATION OF HACKNEY CARRIAGES.

The HON'BLE MR. REYNOLDS moved that the Bill to amend Bengal Act V of 1866 be read in Council. He said that at the last meeting of the Council he asked leave to introduce this Bill. The Bill was not then in the hands of the members, and one hon'ble member expressed a doubt whether a Registrar of Hackney Carriages appointed by the Corporation would be in all respects an officer of the Corporation, and come under the general rules which regulated the appointment and dismissal of officers of the Corporation. To meet that objection MR. REYNOLDS had prepared an amendment in substitution for the second and third paragraphs of section 1 of the Bill as it stood. Instead of providing that the officer so appointed should be subject to the order, disposition, and control of the Chairman of the Corporation, so far as the Town and Suburbs of Calcutta are concerned, he proposed to say that the officer so appointed shall, as far as the Town and Suburbs of Calcutta are concerned, be subject to the order, disposition, and control of the Corporation, and that the appointment and removal of the registering officer shall be subject to the provisions of section 36 of the Calcutta Municipal Consolidation Act, which provided that no officer, whose salary exceeded Rs. 200 per mensem, should be appointed to, or removed from, his office without the sanction of the Commissioners at a meeting. At present MR. REYNOLDS only moved that the Bill be read in Council.

The motion was agreed to.

On the application of the HON'BLE MR. REYNOLDS the Rules for the conduct of business were suspended to enable him to move that the Bill be taken into consideration and passed.

The HON'BLE MR. REYNOLDS moved that the following be substituted for the second and third paragraphs of section 1 of the Bill:—

"But the Local Government may, if it think fit, empower the Corporation of the Town of Calcutta to appoint such registering officer, and any officer when so appointed shall, so far as the Town and Suburbs of Calcutta are concerned, be subject to the order, disposition, and control of the said Corporation.

"The appointment and removal of such registering officer shall be subject to the provisions of section 36 of the Calcutta Municipal Consolidation Act, 1876."

The motion was agreed to.

The HON'BLE Mr. REYNOLDS then moved that the Bill be passed. He mentioned at the last meeting that it was hoped that the passing of this Bill would effect a considerable saving in the cost of working the Act, and it was therefore desirable that it should be passed and come into operation as soon as possible.

The motion was agreed to and the Bill passed.

REGISTRATION OF ESTATES.

The HON'BLE Mr. REYNOLDS moved that the Bill to amend Bengal Act VII of 1876 be read in Council. He explained the object of this Bill at the last meeting, when asking for leave to introduce the Bill, and he believed it was generally admitted that the Bill was necessary and unobjectionable.

The motion was agreed to.

The Rules for the conduct of business having been suspended, the HON'BLE Mr. REYNOLDS moved that the Bill be taken into consideration and passed. He mentioned at the last meeting that he intended to adopt this course, and as no objection had been offered either to the principle of the Bill, or the way in which it had been drafted, he hoped that the Bill would now be passed.

The motion was agreed to and the Bill passed.

CLEANSING AND ERECTION OF LATRINES IN FIRST CLASS MUNICIPALITIES

The HON'BLE Mr. MACKENZIE moved that the report of the Select Committee on the Bill to provide for the cleansing and erection of latrines in first-class municipalities be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The Select Committee, he said, in considering the Bill, had made one or two somewhat material amendments. The first of these arose from the fact that there were certain parts of the Suburbs in which it was not desirable to introduce such an elaborate system as that which was known as Halalkore. Accordingly the Committee provided that the system might be extended, not necessarily to the whole of a municipality, but to any part of it. It was also made clear that the rate under this Bill should not be a fixed percentage upon the valuation of holdings, but on a scale which was to be fixed by the Lieutenant-Governor in communication with the Commissioners in meeting. The Committee had had some difficulty in determining what the minimum rate should be, and indeed it had been suggested that no limits should be inserted

in the Act, Government being left to adjust the scale to suit the circumstances of each place. On the whole, however, it was considered desirable that some limit should be inserted in the Bill, and the question had then been how to reconcile the conflicting views of the Howrah and Suburban Municipalities. The original proposal was that the lowest limit should be a rate not exceeding Rs. 3 where the valuation of the holding amounted to, or was less than, Rs. 50. That did not suit the circumstances of Howrah. The Howrah Municipality proposed that the minimum rate should be Rs. 1-8 on a holding whose annual valuation amounted to, or was less than, Rs. 25. That, again, did not suit the circumstances of the Suburban Municipality. It was therefore resolved as a compromise that the minimum rate should be Rs. 3 on a holding, the annual valuation of which was Rs. 25 or less. It would not be necessary to impose the full fee in every case. The rates at Howrah would be less than those to be imposed in the suburbs, where the rates proposed to be adopted, though higher than those for Howrah, would still be less than those now levied. At present a rate of from 8 annas to 10 annas per mensem was levied upon a holding of Rs. 25; whereas 4 annas would be the maximum fee which the Suburban Municipality could levy under this Bill on holdings of similar value, and with that rate they were quite content.

The Committee had provided for the giving of public notice annually of the scale of fees fixed, and for the reduction or remission of the fee on the ground of poverty. They had also swept away entirely the section imposing a joint liability upon the owners of holdings and the Commissioners in respect of the construction of public latrines; it did not appear to be the duty of owners to provide public latrines, but only latrines for their tenants. It was the duty of the Commissioners to provide public latrines for the general population and for those who came within the municipality to work for the day, and the Committee had therefore left the construction of public latrines to be undertaken either from the general fund, or from the surplus proceeds of fees under this Act.

The Committee had made a few other amendments of small importance, and Mr. Mackenzie had one or two further amendments to propose on behalf of the municipalities interested, whose suggestions had only reached him at the last moment, in addition to those of which notice had been given, some of which had been suggested by the learned Advocate-General.

The motion was agreed to.

On the motion of the Hon'ble Mr. Mackenzie, the words "three rupees" were substituted for "one rupee eight annas" in the first line of the second paragraph of section 3.

Verbal amendments were, on the motion of the Hon'ble Mr. Mackenzie, made in sections 7, 8, 10, 13, and 15, and in the preamble of the Bill; and to section 19 the following words were added:—

"And the word "holding" in this Act shall mean a holding as already ascertained for the purposes of assessment under the aforesaid Bengal Municipal Act, 1876."

The Hon'ble Baboo Isser Chunder Mitter moved an amendment which had been suggested to him by the Chairman and Vice-Chairman of the Suburban Municipality. He said that section 203 of Act V of 1876

provided that, where the owner or occupier of any private privy neglected or refused to keep the same in a proper state, he should be liable to a fine not exceeding Rs. 5. It was proposed by this Bill to make the Commissioners' establishment liable for the duty of cleaning privies. But it had been suggested that keeping a privy in a proper state included something more than keeping it clean; that the privy should be kept in proper repair, and that proper receptacles should be provided therein, otherwise it would be impossible to clean the privy properly. He therefore moved that the following proviso be added to the section:—

"Provided that such privy shall be kept in a proper state of repair, and that such necessary vessels and receptacles shall be provided as may be directed by the Commissioners."

The HON'BLE THE ADVOCATE-GENERAL remarked that section 203 of the Bengal Municipal Act did not apply to the repairs of privies; it merely referred to their cleansing. The words "proper state" in that section referred, according to the context, to drains, privies, and cess-pools, and simply meant a proper state of cleanliness. The proviso which had been proposed would conflict with the existing law, and he therefore thought that the Council ought not to agree to its introduction.

After some conversation the motion was negatived.

On the motion of the HON'BLE MR. MACKENZIE the Bill was then passed.

RURAL POLICE IN HAZARIBAGH AND LOHARDUGGA.

The HON'BLE MR. O'KINEALY moved that the Report of the Select Committee on the Bill for the regulation of the rural police in the districts of Hazaribagh and Lohardugga be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The HON'BLE BABOO KRISTODAS PAL said he had given notice of an amendment with a view to enable the Deputy Commissioner to recover money which might be embezzled or misappropriated by a headman. The Bill provided no remedy against a headman in such a case. He might, it was true, be punished under the Penal Code, but who was to make good the loss—the landholders, or the parties liable to the rural police cess? It had, however, been pointed out by the hon'ble mover of the Bill that under the Penal Code a headman, who was convicted of embezzlement or misappropriation, might be sentenced to both imprisonment and fine, and that the amount of the fine might be applied to make good the loss which might have been sustained. Then another difficulty had been pointed out by the hon'ble member, namely, that if the provisions of Act XII of 1850 were extended to village headmen, security must under that Act be taken from them. For these reasons, on second consideration, BABOO KRISTODAS PAL thought proper to withdraw the amendment of which he had given notice.

On the motion of the HON'BLE MR. O'KINEALY the Bill was then passed.

CONSOLIDATION OF THE EXCISE LAWS.

The HON'BLE MR. REYNOLDS moved that the report of the Select Committee on the Bill to consolidate and amend the law relating to the Excise Revenue in the Presidency of Fort William in Bengal be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The Bill, he said, had been re-arranged on the lines of the Excise Act of 1871, and was in substance a reproduction of Act XXI of 1856, a few sections taken from Act XI of 1849 having been inserted in their proper place to provide for the excise administration of Calcutta. He believed that the most substantial alteration in the law that had been made was the insertion of a provision that in Calcutta wholesale vendors of exciseable articles should pay fees for their licenses: the Select Committee could find no reason why wholesale vendors in Calcutta should be exempted, whilst elsewhere, throughout the province, they were required to be licensed. The other alterations which had been made by the Committee were completely set out in the report and needed no comment.

The motion was agreed to.

The HON'BLE MR. REYNOLDS said that he did not propose to ask the Council to pass the Bill that day, and as he had a few verbal amendments to propose, he would suggest that the further consideration of the Bill be postponed.

The further consideration of the Bill was accordingly postponed.

COURT OF WARDS.

On the motion of the HON'BLE MR. REYNOLDS, the Hon'ble Mr. Buckland was added to the Select Committee on the Bill to amend the law relating to the Court of Wards within the provinces subject to the Lieutenant-Governor of Bengal.

The Council was adjourned to Saturday the 13th instant.

Saturday, the 13th April 1878.

Present:

The Hon'ble G. C. PAUL, *Advocate-General, presiding.*
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. J. REYNOLDS,
The Hon'ble J. O'KINEALY,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR,
The Hon'ble BABOO MOHINI MOHUN ROY,
The Hon'ble AMEER ALI,
and
The Hon'ble A. B. INGLIS.

NEW MEMBER.

The Hon'ble MR. INGLIS took his seat in Council.

CONSOLIDATION OF THE EXCISE LAWS.

The HON'BLE MR. REYNOLDS moved that the Bill to consolidate and amend the law relating to the Excise Revenue in the Presidency of Fort William in Bengal be further considered in order to the settlement of its clauses.

The motion was agreed to.

On the motion of the HON'BLE MR. REYNOLDS a verbal alteration was made in section 4.

The HON'BLE BABOO KRISTODAS PAL moved the omission of the words "fresh or" after the word "tari" in line 3 of the definition of "fermented liquor" in the same section. The object of the Bill, he said, was to control and, if possible, prevent the use of intoxicating drinks and drugs. The acquisition of revenue was a secondary object; but the primary object was to prevent the consumption of intoxicating drinks and drugs. He believed the Council would agree with him that fresh tari could not be called a fermented liquor, and so the inclusion of the word "fresh" in this clause, in his humble judgment, was not consistent. He was aware that the word was used in the old law, but when it was being subjected to revision, if anything appeared in it which was incongruous or inconsistent, it ought to be corrected. He could not believe that any member of this Council would hold that fresh tari or palm-juice was intoxicating; if anything, it was the reverse; it was, indeed, a cooling, wholesome, medicinal beverage, and he could not conceive that the Government would wish to tax the consumption of such an unobjectionable drink. He was not aware until this moment that this drink was subject to an excise duty. But whether it was subject to duty or not, looking to the main object of the Bill, he considered that it was inconsistent to include fresh tari in the category of fermented liquor.

The HON'BLE MR. REYNOLDS said he hoped the hon'ble member would not press the amendment, as he was unable to accept it. The object of the Bill was to consolidate the existing law; whereas the

amendment before the Council, if carried, would effect a serious and important alteration of the law, and he thought that, before proposing it, the hon'ble member should be prepared with a more practical objection than the apparent incongruity of the existing provision. The Bill was substantially a re-production of Act XXI of 1856, and he had never heard a single complaint that the inclusion of fresh tari in the law had worked any hardship to the people. There was no intention to interfere vexatiously with the production and use of fresh tari, and if the hon'ble member referred to section 14, he would see that provision was made for dispensing with the operation of this clause where the consumption of tari in a fermented state was inconsiderable. But where the consumption was considerable, it was a very important matter that the Government should have certain powers of supervision and regulation over the production of the fresh tari, which became fermented by the lapse of a few hours of the day. He therefore hoped the Council would not agree to this amendment.

The HON'BLE BABOO KRISTODAS PAL said he was entirely in the hands of the Council, and was prepared to withdraw the amendment if the sense of the Council was against it. If it was considered objectionable to introduce any new matter in the Bill, because it was a consolidation measure, he thought it would be admitted that a provision of this kind had already been introduced by the clause which subjected wholesale vendors of intoxicating liquors in Calcutta to a license. Now, if the real objection to the amendment which he had proposed was that no substantial alteration of the law should be made in this Bill, then he did not think it quite consistent to introduce the provision to which he had just referred. But he believed it was open to the Council to consider the provisions of the old law with reference to the altered circumstances of the country, or in the light of any new considerations which experience might suggest. He had brought forward this amendment because he thought it was not consistent to define fresh tari as fermented liquor, because the two terms were not synonymous, and because to call "fresh" palm-juice "fermented" would be to ignore physical fact.

The HON'BLE THE ADVOCATE-GENERAL observed that it had been sufficiently explained to this Council that this was a Bill to consolidate and amend the laws relating to the manufacture, sale, and possession of exciseable articles, and to the collection of the revenue derived therefrom. Under the old law tari, although not fermented, was an exciseable article, and so section 4 of this Bill, which contained definitions, enacts that for the purposes of the Act, tari should be held to be a fermented liquor. The Council could not alter the nature of the article itself; it might very properly enact that a liquor which by exposure to the sun for a few hours becomes an intoxicating drink should be placed in the category of fermented liquors. Therefore it struck him that although the objection which had been raised by the hon'ble mover of the amendment was ingenious, he thought that that objection, standing by itself, was an objection which ought not to be allowed. He thought also that an objection of this nature ought to have been laid before the Select Committee, in order to allow the members of the Government to

consider it carefully. [The HON'BLE BABOO KRISTODAS PAL observed that he was not a member of the Select Committee]. The Council could not go into the matter without a further postponement, and as the amendment was of some importance and would affect the revenue, he thought it would be as well if the amendment were withdrawn and not put to the vote.

The motion was then by leave withdrawn.

The HON'BLE MR. REYNOLDS moved the addition to section 15 of the following words:—

"The Board may by rule define what shall be held to be an assortment for the purposes of this section.

"The Board may also determine what shall be a retail sale of any article from time to time declared by the Local Government to be included in the definition of intoxicating drugs under this Act."

The last clause of the section as it stood declared that the sale of an assortment of spirituous or fermented liquors in the quantity specified above, or in less quantity, by a licensed wholesale vendor, was prohibited. The special object of that clause was for the protection of retail vendors in order that those who had wholesale licenses might not have the power of selling in such a way as to interfere with the trade of retail vendors. The Select Committee considered the question whether they should define what should be considered an assortment of liquors, and found it difficult to come to any definite conclusion upon the point; and therefore they thought it expedient that the matter should be left to be defined by rules to be framed by the Board of Revenue.

The second clause of the amendment was to provide an accidental omission in the Bill. The Bill gave power to the Board to declare what should be a retail sale of any article declared by the Government to be fermented liquor; but as it did not give the same power as to intoxicating drugs, it seemed necessary to make provision for that also.

The motion was agreed to.

On the motion of the HON'BLE MR. REYNOLDS the second clause of section 17 was omitted, provision for the same object being made by an amendment to be moved in section 61.

In sections 18 and 27 amendments were made, on the motion of the HON'BLE MR. REYNOLDS, to supply an accidental omission; and at the end of the latter section he moved that the words "as if the said license and engagement had been formally renewed" be inserted. MR. REYNOLDS was not quite sure that these words were necessary. It had been suggested to him that, under the clause as it stood, licensees might possibly claim to hold during the period referred to without payment of any fees. It might be argued that the license remaining in force for such time as the Collector might think fit, no additional fee would be due; perhaps therefore it was well that the above-mentioned words should be added.

The motion was agreed to.

The HON'BLE BABOO KRISTODAS PAL moved that in section 29, line 7, for the words "breach of the peace or any other criminal offence" the words "non-bailable criminal offence" be substituted. He said that, as the section

was worded, any breach of the peace would render a person holding a license liable to forfeiture of his license. It was not here provided that if any breach of the peace occurred between the license-holder and any other person on the premises of the licensee's shop, it would render the license liable to be cancelled; he understood that the conditions under which licenses were granted provided for such cases. But under this section a license-holder might be convicted of a breach of the peace anywhere, and he would be liable to forfeiture of his license. It could hardly be intended that for an offence of that sort a licensee should be subjected to the loss of a civil right. He thought that the object in view would be met if the punishment of forfeiture of license were confined to cases in which a licensee was convicted of a non-bailable criminal offence.

The motion was agreed to.

On the motion of the HON'BLE MR. REYNOLDS, amendments of an unimportant nature were made in sections 31, 39, and 61.

Section 65 provided a fine of Rs. 500 upon every proprietor, farmer, tehsildar, gomashta, or other manager of land who authorizes or connives at the manufacture or sale of any exciseable articles by any unlicensed person.

The HON'BLE BABOO KRISTODAS PAL moved to insert the words "upon lands held by him from such proprietor, farmer, tehsildar, gomashta, or manager" after the words "unlicensed person." The object of section 65 was to define the responsibility of landholders in respect to the manufacture of any exciseable article. As the section was worded, it might be construed to include a proprietor whose land might not be leased out for the illicit manufacture of exciseable articles, and who might not have the opportunity of knowing of, or conniving at, the offence. The proprietor might be the landholder of a whole pergunnah; he might have let out his estate in farm to different individuals, one of which individuals (A) might allow a person to manufacture in an illicit manner any exciseable article under this Bill. Well, the actual proprietor not knowing anything, and not being in a position to know, and not having the power to interfere with the lessee of the land, BABOO KRISTODAS PAL did not think it would be just to include him in section 65, as the section in its present form would do. If it should be argued that, irrespective of the law, the immediate owner of the land upon which illicit manufacture was going on, should give notice, he admitted that it was clearly the duty of all classes to do so, and he did not see why a particular class should be singled out and made subject to a heavy liability. He could understand that a man who himself allowed his land to be used for an illicit purpose should be held responsible; but section 65 as worded was not confined to the immediate holder of the land.

The HON'BLE MR. BUCKLAND said he thought the amendment proposed was not absolutely necessary, and he was also afraid that this provision of the law had always been a dead letter. He had not heard of a case in which it was possible to find evidence of authority given by a proprietor of land for the illicit manufacture of exciseable articles, and as to connivance, it was very difficult to define what it meant. If, however, the hon'ble member wished to press the amendment, he had no objection to offer.

The HON'BLE MR. REYNOLDS observed that he had no strong objection to the amendment, but he should prefer to retain the present wording of the section.

The HON'BLE THE ADVOCATE-GENERAL said, suppose a man let his land on the condition that this use should not be made of his land, and that if it was so used, he might re-enter into possession. Suppose that the land was so used and that he did not re-enter. Such conduct may be evidence of connivance. A Magistrate who convicted under this section must find that the proprietor or manager authorized or connived; a man who wilfully kept his eyes shut might be said to connive.

The motion was then put and negatived.

On the motion of the HON'BLE MR. REYNOLDS the words "or of Bengal Acts II and IV of 1866" (the Calcutta and Suburban Police Acts) were added to the saving clause at the end of the Bill.

The Bill was then passed.

The Council was adjourned *sine die.*

Saturday, the 21st December 1878.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble G. C. Paul, *Advocate-General*,
The Hon'ble C. T. Buckland,
The Hon'ble H. A. Cockerell,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble Ameer Ali,
The Hon'ble Moulvi Ameer Hossein,
The Hon'ble Baboo Mohini Mohun Roy,
The Hon'ble A. B. Inglis,
and
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor, C.I.E.

NEW MEMBER.

The Hon'ble Moulvi Ameer Hossein took his seat in Council.

STATEMENT OF THE COURSE OF LEGISLATION.

His Honor the President said—Before the Council proceeded to the regular business before them, it might perhaps be convenient to refer to the position in which they stood in regard to the business which was likely to come before the Council during the present cold weather. The first and oldest measure they had before the Council was a Bill which was passed last year—he meant the Bill to amend the procedure in suits between landlord and tenant in Chota Nagpore—and was sent up for the assent of the Governor-General. That assent had not been received; in fact it had been withheld, but there was no chance of the Bill being vetoed. The assent, however, had been kept in abeyance on account of a technical difficulty arising from the Act being somewhat in conflict with section 4 of the Civil Procedure Code. He believed that at the next meeting of the Council of the Governor-General a short provisional Bill would be passed amending the Code, and the difficulties in the way of giving legal effect to the Bill which had been passed by this Council would then be removed. When that had been done, they should also be able to bring in a Bill which had been discussed for a long time, a Bill which he had pledged himself to endeavour to have passed into law, for improving the procedure in suits for rent. The consent of the Government of India to a Bill of that sort being introduced was obtained in the early part of 1877. After the Bill had been drafted and circulated for the consideration of a number of local officers of experience and certain public bodies and private individuals, and the opinions of those officers and others had been received, he was advised that

that Bill, for the same reason as the Chota Nagpore Rent Bill, was beyond the powers of the local Council, and should be dealt with by the Council of the Governor-General. He therefore addressed the Government of India, forwarding the draft of such a Bill as seemed to be required, with a request that it might be considered and passed by the Council of the Governor-General; but, on account of the difficulty to which he had referred, the Bill had remained pending. The Bill was ultimately referred back to this Government, with the intimation that the Code of Civil Procedure would be so amended that the local Council would be able to take up the Bill and pass it themselves. The subject of the Bill was one which was obviously particularly within the province of a local Council to deal with. He hoped, as he had said before, that the Bill to amend the Civil Procedure Code would be passed at the next meeting of the Council of the Governor-General, and, in anticipation of the passing of such a Bill, the Hon'ble Mr. Mackenzie would move for leave to bring in a Bill to provide for the more speedy realization of arrears of rent. The draft of the Bill which the hon'ble member proposed to introduce had been largely circulated for discussion amongst officers of experience and knowledge of the subject, and the Government had received a large number of replies, and many valuable suggestions and criticisms. There had also been a lengthy correspondence with the British Indian Association, in which they had represented their views very ably. There was at first a great difference of opinion between them and the Government regarding the transfer of occupancy rights; but although the members of the Association did not all agree to what was proposed, the majority of the Association had withdrawn to a great extent the objections which they had raised, and he hoped that in Committee the Council would be able to come to some definite conclusion upon the subject. It must be expected that the landholding classes would be inclined strongly to the landholding view in this respect, but he believed that a perusal of the papers would show that the Association were disposed to consider the matter in an impartial spirit, and he thought they had represented the general opinions of the landholding interest on this question.

The next Bill before the Council was a Bill for the settlement of the rents of lands on the application of landlords and tenants. There had been a good deal of correspondence on this Bill also, which had been circulated to the Commissioners of Divisions and other local officers and public bodies. There had been considerable differences of opinion as regards the details of the measure and on one or two of the main principles of the Bill. But he felt satisfied that when the papers were laid before the Committee they would be able to frame a really useful, beneficial measure, which would meet the real interests of both the parties concerned.

The Court of Wards' Bill was still under the consideration of a Select Committee. The subject was a very pressing one, and he hoped the Select Committee would proceed with the consideration of the Bill with as much expedition as was practicable. A number of communications regarding this Bill had been received since the last meeting of the Council, and he had no doubt they would receive the careful consideration of the Committee.

The President.

So much for the Bills which had been drafted or were under discussion before. There were also one or two new Bills, and there might probably be some more introduced later on. Amongst these was a Bill to consolidate and amend the law relating to jute warehouses and fire-brigades in the town and suburbs of Calcutta and Howrah. The object of this Bill was to reduce the fees now received for the registration of jute warehouses. It would be found, as would probably be explained by the hon'ble member in charge of the Bill, that they were levying fees in excess of what was required for the *bonâ fide* purposes of the Act, and the charge upon Insurance Companies also pressed rather hardly upon them, and a Bill would be brought in to remedy those defects in the existing law.

Then there was a Bill to transfer the control of passenger boats plying within the Port of Calcutta from the Commissioner of Police to the Conservators of the Port; and a Bill to extend to other places, where pilgrims congregated, the same provisions of law which had operated so satisfactorily at Pooree, with a view to provide for sanitation in the midst of the large towns in Bengal to which pilgrims flocked at particular seasons of the year.

Lastly, there was a Bill for the periodical inspection of steam-boilers and prime-movers attached thereto in the town and suburbs of Calcutta and Howrah. The main features of this Bill would be explained to the Council by the Hon'ble Mr. Cockerell when he moved for leave to introduce it.

Besides the above mentioned measures, there were, as he had said before, one or two little Bills, which were not yet in a condition to be placed before the Council, and he need not therefore further allude to them at present.

JUTE WAREHOUSES AND FIRE-BRIGADES.

The Hon'ble Mr. Cockerell moved for leave to introduce a Bill to consolidate and amend the law relating to jute warehouses and fire-brigades in Calcutta, the Suburbs, and Howrah. The Bill was really one to amend the two existing Acts in force, namely, Bengal Acts II of 1872 and II of 1875. The object of the Bill was to enable the Government to relieve the jute trade from the heavy taxation with which it was now burdened. Under the existing law, the entire expense of maintaining, and even more than maintaining, the fire-brigades for Calcutta and the Suburbs was thrown upon the jute and cotton trade. At first sight it would appear that the easiest way of remedying the difficulty would perhaps be to increase the area of taxation, and to bring under the operation of the Act warehouses used for the storage of other inflammable materials. But a difficulty existed in the schedule of rates, which gave a minimum below which they could not be fixed. In the present Bill it was proposed to introduce a new scale of fees, and also to render places used for the storage of inflammable mineral oils and other inflammable materials liable to taxation. Such places were as dangerous to the town as the jute and cotton warehouses, and it was proposed that they should also be made to contribute towards the expenses of the fire-brigade which was maintained for the protection of Calcutta and the Suburbs.

The motion was agreed to.

STEAM-BOILERS AND PRIME-MOVERS.

The HON'BLE MR. COCKERELL moved for leave to introduce a Bill for the periodical inspection of steam-boilers and prime-movers attached thereto in the town and suburbs of Calcutta and in Howrah. The existing Act under which these inspections were made—Bengal Act VI of 1864—only provided for the inspection of boilers and prime-movers within the limits of Calcutta and the Suburbs and the municipal limits of the town of Howrah. At the time the Act was passed there were few factories of any importance beyond those limits, and it was not considered necessary to give the Act any more extended operation. Since that time, however, a large number of extensive factories had been erected, on both sides of the river beyond the limits of the town and suburbs, where steam-power was employed; there were a number of laborers employed in these factories, and it was therefore considered desirable that they should be brought under the same supervision as the factories within the town and suburbs; and it was therefore proposed to empower the local Government to extend the Act to any district in Lower Bengal. The opportunity would be taken to incorporate the two existing Acts into one, and introduce certain amendments suggested by the Steam-boiler Committee.

The motion was agreed to.

PASSENGER BOATS (CALCUTTA).

The HON'BLE MR. MACKENZIE moved for leave to introduce a Bill to transfer the control of passenger boats plying within the port of Calcutta from the Commissioner of Police to the Conservators of the Port. He said—"Some years ago, in 1871-72, the Port Commissioners of Calcutta undertook to pay three-fourths of the cost of the River Police on condition that the surplus fees from the registration of cargo and passenger boats plying within the port were made over to them. They have continued up to date to draw those fees. But under the law, as it stood, the work of surveying and registering cargo boats and realising fees on that account lay with the Collector of Customs, while the registration of passenger boats is still a duty of the Commissioner of Police. It has from the outset been admitted that if the Commissioners benefit by the fees, they might very well undertake the supervision of the work; and it has been shown that economy in establishments might be effected by bringing the registration of both cargo and passenger boats under one and the same authority. The new Customs Act VIII of 1878 has enabled the Lieutenant-Governor to entrust the management of cargo boat registration to the Port Commissioners, and the Bill which I now ask leave to introduce is designed to transfer the registration of passenger boats plying within the port from the control of the Commissioner of Police to that of the Port Commissioners."

The motion was agreed to.

RECOVERY OF RENT.

The HON'BLE MR. MACKENZIE moved for leave to introduce a Bill to provide for the more speedy realization of arrears of rent, and to amend the law relating

to rent in Bengal. He said—"The announcement which you, Sir, have been able to make regarding the long-pending legislation on rent matters will, I am sure, have been gratifying to this Council, as it must be to the great landed interests of Bengal. In moving accordingly on the part of Government for leave to introduce a Bill to provide a more summary procedure for the realization of rents, and to amend in other particulars the rent law of the province, I do not feel called upon to take up the time of hon'ble members by any very lengthy speech. It will be necessary for me hereafter, should my motion be accepted, to explain, and I hope justify, the scope and motives of the measure which I shall then have the honor to submit. To-day, however, I need only remind the Council that the demand for a more summary method of realising undisputed rents than is provided by the ordinary procedure of the civil courts has been waxing louder and more pressing year by year since the passing of Act VIII of 1869.

The law's delays are, we know, proverbial; but the delays of a Bengal rent suit in a Bengal Moonsiff's court are more than even proverbial philosophy can make palatable. Notwithstanding the fact that in about 75 per cent. of the suits for arrears of rent the claim is not really contested, the zemindars and other rent receivers have too often found themselves unable to recover their just dues without submitting to a process which entails costs that they may possibly never recover, and delays that are frequently embarrassing and ruinous; and even when the zemindar has got his decree, it by no means follows that he has got his rent. Now, it is doubtless true that much of this difficulty in realizing rent actually due has arisen from the fact that in many districts there lie unsettled between landlords and tenants very serious open issues regarding rates, enhancement, interest, tenant-rights, and so forth. And the zemindars were, at the outset, anxious that in any legislative settlement of the matter the whole field of dispute should be, as it were, cadastrally surveyed, and all the doubtful boundary lines permanently marked. This course of action was, as some of us are aware, very strongly pressed upon the Government at the time of the Pubna rent disturbances, and at the commencement of the more widespread, though less noisy, agrarian movement in Eastern Bengal; but even Sir George Campbell shrank from encountering the general upheaval of the whole rent system, as by law established, which such an enquiry and such legislation would certainly then have brought about. It was decided, therefore, to adopt a policy of watchfulness and waiting, in the hope that compromise and common sense would lead both parties nearer to a mutual settlement. That policy has to a great extent been justified by its results, and you, Sir, were able, at the close of your first tour throughout the Eastern districts, to declare your satisfaction with the improved tone and feeling which you then found to exist between landlords and tenants, owing, as it appeared, to wise and mutual concessions made. If anything were required to prove the enormous difficulties which even now beset every attempt to deal by law with the details of the economic problems that are wrapped up in this question of enhancement, the criticisms elicited by the measure so ably advocated by Sir R. Temple two years ago would supply that proof. The present Government

is now indeed considering the possibility of dealing with it by approaching the difficulty from a different side. A position which it is hopeless to storm in front, may sometimes (as at Peiwar Kothul) be successfully outflanked. It is just possible that by reverting to the old theory of rent adjustment in this country, as a matter for the arbitrament or settlement of the ruling power and its revenue officers,—it is possible, I say, that we may find a rational remedy for the existing unsatisfactory dead-lock. That, however, is a matter which needs careful consideration and jealous scrutiny; and circumstances have arisen which make it imperatively necessary to deal separately and at once with the more simple question of the recovery of undisputed arrears of rent.

The zemindars on their part are now not merely not unwilling, but anxious, to have this portion of their case taken into separate and final consideration. The Road Cess and Public Works Cess Acts have thrown upon them the responsibility of collecting with their rents and paying into the treasuries all that portion of this fresh local and provincial taxation which falls upon under-tenants of every degree. If they cannot recover this easily and effectually from their tenants, they must under penalty pay the amount themselves—a position which the State is obviously bound to render as little burdensome as possible. The Lieutenant-Governor, therefore, as he has informed us immediately on his assumption of office, and in accordance with the last views of his predecessor, pressed upon the Government of India the necessity of early legislation to facilitate the recovery of undisputed rents and to improve the law for execution of decrees in rent cases. The actual measure proposed was settled by a committee of Government officers and native gentlemen, and would doubtless long ere now have been passed into law, but for the fact that certain legal theories regarding the legislative powers of this Council stood in the way. Last February, therefore, to avoid all technical difficulties of this nature, the Government of India was moved to have the Bill which had been prepared by the local Government passed in the Supreme Legislature. Involving, however, as such a measure must, many issues of local importance, appreciable fully only by local experience, the Supreme Government has, on mature consideration, preferred after all to relegate the whole matter to the local Council, undertaking on its part to do what is necessary to validate our proceedings by supplementary legislation in its own Chamber. This resolution will, I think, be satisfactory to all interested, as we shall in this way have the advantage of the criticisms and suggestions of my hon'ble friends opposite, and of the several officers of wide Bengal experience who now sit upon this Council.

But while the delay that has taken place in legislation may have been trying to the zemindars, it has enabled the Government to mature and graft upon the proposed measure various amendments of the law, calculated, as it believes, to do much good to the ryots. Leaving, as I have already said, the economic questions involved in the law of enhancement for separate treatment, the Government has sought, while improving the position of the zemindar in respect of his realizations of rent, to strengthen also the position of the cultivator by relieving him from the harassment of too frequent suits, by securing for him good evidence of his payments, and, above all, by giving

The Hon'ble Mr. Mackenzie.

him a transferable right and interest in his occupancy tenure. I shall on a future occasion explain under what limitations and safeguards the Government believes that these reforms are possible, but meantime I have perhaps said enough to convince the Council of the great importance of the measure leave to introduce which I now crave."

The Hon'ble Kristodas Pal said—As he had taken a somewhat active part in the discussions upon the rent question in Bengal, he desired to express his satisfaction at the step proposed to be taken to improve the law for the recovery of rent. His hon'ble friend the mover of the Bill had in lucid and glowing periods described the state of the rent question in Bengal. He had told the Council how there had been a dead-lock and how the attitude of Government had hitherto been to wait and watch, and that active intervention would now take the place of the masterly inactivity of former days. This was a matter for congratulation. His Honor the President, in addressing the Council last year upon the Irrigation Bill, had pledged himself to a Bill of this kind. In referring to the obligations imposed by the new Cess Acts upon landlords of collecting on behalf of Government the cesses from their tenants, His Honor said—

> They have not such facilities as they should have for the ready and prompt realization of their rent and the Government cesses. This difficulty had already attracted the attention of my predecessor, Sir Richard Temple, and just before he left Bengal he recorded a minute expressing his intention of at once applying for the sanction of the Government of India to pass a short Bill to provide a system for the realization of rent in a somewhat more summary and prompt process than that which now exists. I shall give that subject my best attention, and I may say that I am already in communication with the officers subordinate to me, and I hope it will not be long before I shall be in a position to ask the Council, with the permission of the Government of India, to pass a Bill of this sort.

That Bill was about to be laid before the Council, and the pledge which His Honor was pleased to give was now on a fair way to be fulfilled. As the Bill was not yet before the Council, Baboo Kristodas Pal was not in a position to consider its details, but he hoped it would have the effect of pouring oil over troubled waters.

The motion was then agreed to.

EXTENSION OF THE POOREE LODGING-HOUSE ACT.

The Hon'ble Mr. O'Kinealy moved for leave to introduce a Bill to amend Bengal Act IV of 1871 (The Pooree Lodging-house Act). This Act was passed in 1871 for the sanitation of the town of Pooree, and had worked remarkably well. The necessity for extending the operation of the Act to other towns where pilgrims congregated had been brought to the notice of Government, and it was considered advisable to give the local officers of such towns powers similar to those conferred on the Magistrate of Pooree by Act IV of 1871.

The motion was agreed to.

COURT OF WARDS' BILL.

The HON'BLE MR. BUCKLAND moved that the Hon'ble Mr. Mackenzie be added to the Select Committee on the Bill to amend the law relating to the Court of Wards within the provinces subject to the Lieutenant-Governor of Bengal.

The motion was agreed to.

The Council was adjourned to Saturday, the 4th January 1879.

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